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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947.

No. [redacted]43

CENTRAL STATES COOPERATIVES, INC.,
a corporation,
Petitioner,

vs.

WATSON BROS. TRANSPORTATION COMPANY,
INC., a corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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IN THE

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OCTOBER TERM, 1947.

No.

CENTRAL STATES COOPERATIVES, INC.,
a corporation,
Petitioner,

vs.

WATSON BROS. TRANSPORTATION COMPANY,
INC., a corporation,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

I.

STATEMENT OF MATTER INVOLVED.

(a) The Questions.

This application raises the following questions:

(1) Whether or not the amendment enacted by Congress in 1940, 54 Stat. 143 (1940) to Sec. 24(1) of the Judicial Code of the United States, 28 U.S.C.A., Sec. 41(1), is constitutional.

(2) Whether the amendment enacted by congress in 1940, 54 Stat. 143 (1940) to Sec. 24(1), of the Judicial

Code of the United States, 28 U.S.C.A., Sec. 41(1), in pursuance of Art. I, Sec. 8 of the constitution of the United States,

> (Cl. 17) "To exercise exclusive legislation in all cases whatsoever over such district (not exceeding 10 miles square) as may, by cession of particular states, and the acceptance of congress, become the seat of the government of the United States, • • •
>
> (Cl. 18) "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof, • • •"

granting to the district courts original jurisdiction of all suits of a civil nature where the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00 and is between "citizens of the District of Columbia, the territory of Hawaii or Alaska and any state or territory," is *a law of the United States* within the meaning of that portion of Art. III, Sec. 2 of the constitution of the United States, which reads,

> "The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States • • •"

(3) Whether, since Art. I, Sec. 8, Cl. 9, grants to congress power "to constitute tribunals inferior to the Supreme Court" and Cl. 17 grants to congress power "to exercise exclusive legislation in all cases whatsoever over such district • • • as may • • • become the seat of government of the United States", the full powers of a sovereign government, subject only to express constitutional limitations, are vested in the federal government over the citizens of the United States resident of or domiciled in the District of Columbia, and whether by reason thereof congress may vest in inferior courts of the United States, located outside the District of Col-

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umbia, jurisdiction of cases by or against citizens of the United States resident of or domiciled in the District of Columbia.

(4) Whether that portion of Art. III, Sec. 2 of the constitution of the United States, reading:

> "controversies • • • between citizens of different states"

is in any sense a limitation upon that portion of Art. III, Sec 2, reading:

> "The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States • • •"

(5) Whether (aside from the above questions) a citizen of the United States resident in the District of Columbia is properly to be considered as one of the "citizens of different states" within the meaning and purpose of Art. III, Sec. 2 of the constitution of the United States as a basis for diversity jurisdiction of the Federal Courts.

(b) The Proceedings.

An action was commenced by the plaintiff, Central States Cooperatives, Inc., a corporation of the District of Columbia, in the Municipal Court of Chicago on October 2, 1946 (R. 3, 4) against the defendant, Watson Bros. Transportation Co., Inc., a Nebraska corporation, to recover possession of certain premises in Chicago (R. 4) improved as a truck freight terminal and worth at least $100,000.00 (R. 7, 9, 23). The defendant filed its petition (R. 7) and bond (R. 23) in that court on October 15, 1946, for removal of the cause to the United States District Court for the Northern District of Illinois, Eastern Division, on the ground of diversity of citizenship (R. 7).

After the transcript of the record on removal was filed in the District Court the plaintiff filed its amended complaint (R. 40) for possession, showing that the plaintiff held over in the premises after the expiration, on September 30, 1946, of a written lease on the premises. The defendant answered on December 17, 1946 (R. 61) admitting the expiration of the written lease but claiming an oral lease from the plaintiff for the period from October 1, 1946 to June 30, 1947. Upon a hearing of the cause on December 23, 1946 (R. 82) before a jury, the court at the close of defendant's evidence sustained the plaintiff's motion for a directed verdict for the plaintiff (R. 141-145), finding the defendant guilty of unlawfully withholding from the plaintiff possession of the premises, and judgment was entered accordingly.

The defendant filed its notice of appeal on December 24th (R. 145) and supersedeas bond (R. 150) on appeal to the United States Circuit Court of Appeals for the Seventh Circuit. The record was filed in the Circuit Court of Appeals on February 1, 1947 (R. iii), and the parties filed their several briefs to the merits, the last of which was filed July 11, 1947.

While the appeal was pending and undisposed of on the merits, the defendant on September 23, 1947 filed in the Circuit Court of Appeals (R. 181, 184-193) its motion to reverse the judgment of the District Court and to remand the cause to the District Court with instructions to remand the cause to the state court, for want of jurisdiction of the District Court. Briefs were filed by the parties in support of and in opposition to the motion (R. 194). On October 30th the motion to reverse was denied without prejudice to the defendant's right to renew the motion at the time of the hearing on the merits on November 10, 1947 (R. 194). The opinion of the Circuit Court of Appeals was filed December 12, 1947

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(R. 195) with a dissenting opinion by Judge Evans (R. 203), reversing and remanding the cause, with directions that the District Court remand the cause to the State court from which it was removed (R. 203, 216). The plaintiff's petition for rehearing was filed December 27, 1947 (R. 216) and was denied January 20, 1948 (R. 218).

II.

BASIS FOR THE JURISDICTION OF THIS COURT.

A. The statutory provision which sustains the jurisdiction of the court to review the judgment of the Circuit Court of Appeals in this case is Section 240 of the United States Judicial Code (43 Stat. 938 (1925)), also known as U.S.C.A. Title 28, Sec. 347.

B. The statute of the United States, the validity of which is involved is Section 24 (1) of the Judicial Code as amended by Congress in 1940 (54 Stat. 143 (1940), 28 U.S.C.A. Sec. 41 (1)), which provides:

> "The district courts shall have original jurisdiction as follows: First, of all suits of a civil nature, * * * where the matter in controversy * * * (b) is between citizens of different states or citizens of the District of Columbia, the Territory of Hawaii, or Alaska, and any State or Territory * * *"

C. The date of the judgment sought to be reviewed is January 20, 1948 (R. 218). Petition for certiorari herein is filed for presentation on April 16, 1948.

D. The nature of the case is fully stated in the foregoing statement of matter involved. The ruling of the Circuit Court of Appeals that the United States statute giving jurisdiction to the district court is unconstitutional raises a question entirely of a Federal nature and one

that is substantial, affecting the rights of United States citizens throughout the nation and of the scope of jurisdiction of all Federal District courts. It is believed that the jurisdiction of this court is sustained in this case by the following cases:

Gay v. *Ruff*, 292 U. S. 25, 54 S. Ct. 608, 78 L. Ed. 1099;

Del Vecchio v. *Bowers*, 296 U. S. 280, 56 Sup. Ct. 190, 80 L. Ed. 229;

Brooklyn Sav. Bank v. *O'Neil*, 324 U. S. 697, 65 Sup. Ct. 895, 89 L. Ed. 1296;

Hickman v. *Taylor*, 329 U. S. 495, 67 S. Ct. 385, 90 L. Ed. —;

Lilly v. *Grand Trunk Western R. Co.*, 317 U. S. 481, 63 S. Ct. 347, 87 L. Ed. 411;

Pullman Co. v. *Jenkins*, 305 U. S. 534, 83 L. Ed. 334, 59 S. Ct. 347.

E. Copies of the opinions in Circuit Court of Appeals appear in the Transcript of Record (R. 195, 203), and have been reported as 165 F. 2d 392.

III.

REASONS FOR GRANTING THE WRIT.

Your petitioner further respectfully represents that:

(a) The Circuit Court of Appeals has, in this case, decided an important question of federal law which has not been, but should be settled by this court.

(b) The Circuit Court of Appeals has, in this case decided an important question of federal law in a way probably in conflict with applicable decisions of this court.

The effect of the Circuit Court of Appeals' ruling is (a) that an act of congress exercising its exclusive legislative powers, under Art. I, Sec. 8, Cl. 17 of the constitution, by vesting jurisdiction in the Federal district courts to hear cases involving citizens of the District of Columbia, is not a law of the United States within the meaning of Art. III, Sec. 2 of the constitution conferring judicial powers on the federal government; (b) that the judicial power does not extend to cases arising under such an act of Congress as a law of the United States within the meaning of Art. III, Sec. 2; (c) that Congress may not vest in inferior courts of the United States located outside of the District of Columbia jurisdiction of cases by or against citizens of the United States resident in the District of Columbia, although Art. I, Sec. 8, Cl. 9 grants to Congress power "to constitute tribunals inferior to the Supreme Court," Cl. 17 grants to Congress power "to exercise exclusive legislation in all cases whatsoever over such district • • • as may • • • become the seat of government of the United States", and Cl. 18 grants to Congress power "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States, or any department or officer thereof."

(c) The Circuit Court of Appeals has ruled that an act of Congress, vesting the jurisdiction in federal district courts to hear cases involving citizens of the District of Columbia, is unconstitutional.

This question is of sufficient importance to lead Justice Evans of the Circuit Court of Appeals to say in his dissenting opinion (R. 215):

"In conclusion, I would hold the Act in question to be constitutional even if the doubts which I entertained were more substantial than they are. I would not declare an act unconstitutional in so important a statute, where there was serious doubt, but would leave to the Supreme Court that decision."

(d) While this is the first Circuit Court of Appeals decision on the question here involved, the district courts in the several circuits have decided the matter differently, three district courts having held the act constitutional:

Winkler v. *Daniels*, 43 F. Supp. 265 (D. C. Vir. 1942);

Glaeser v. *Acacia Mutual Life Association*, 55 F. Supp. 925 (D.C. N.D. Cal. 1944);

Duse v. *Woolley*, 72 F. Supp. 422 (D.C. Hawaii 1947);

seven having held the act unconstitutional:

Wilson v. *Guggenheim*, 70 F. Supp. 417 (D.C. E.D. So. Car. 1947);

McGarry v. *City of Bethlehem*, 45 F. Supp. 385 (D.C. E.D. Pa. 1942);

Federal Deposit Ins. Corp. v. *George-Howard*, 55 F. Supp. 921 (D. C. W.D. Mo. 1942); reversed 153 F. 2d 591 (CCA 8th, 1946);

Behlert v. *James Foundation of New York*, 60 F. Supp. 706, (D.C. S.D. N.Y. 1945);

Ostrow v. *Samuel Brillant Co.*, 66 F. Supp. 593 (D.C. D. Mass. 1946);

Feeley v. *Sidney S. Schupper Inter-State Hauling System*, 72 F. Supp. 663 (D.C. D. Md. 1947);

Willis v. *Dennis*, 72 F. Sup. 853 (D.C. W.D. Va. 1947).

Later the Circuit Court of Appeals for the Fourth Circuit, in the case of *National Mutual Insurance Co., of*

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District of Columbia v. *Tidewater Transfer Co., Inc., of Virginia,* 165 F. 2d 531, has held the act in question unconstitutional, Justice Parker writing a dissenting opinion, page 536.

The question has attracted much attention from the bar and legal scholars as evidenced by the several law review articles on the subject:

The Constitutionality of the 1940 Extension of Diversity Jurisdiction, 55 Yale Law Journal 600;

Federal Procedure—Diversity of Citizenship as Applied to Citizens of the District of Columbia and Territorities, 5 Louisiana Law Review 478;

Diversity of Citizenship Clause Extended, 29 Georgia Law Review 193;

Federal Jurisdiction—Constitutional Law, 11 George Washington Law Review 258;

Federal Procedure — Diversity Jurisdiction — 1940 Amendment, 21 Texas Law Review 83;

The 1940 Amendment to the Diversity of Citizenship Clause, 21 Tulane Law Review 171;

Federal Jurisdiction—Constitutional Law—District of Columbia, XLVI Columbia Law Review 125;

Diversity of Citizenship Clause Extended, 29 Georgetown Law Journal 193;

Washingtonians and Rumanians, Nebraska Law Review, March, 1948.

(e) The decision in the case in bar in the Seventh Circuit, and in *National Mutual Insurance Co.* v. *Tidewater Transfer Co., Inc.,* 165 F. 2d 531, in the Fourth Circuit, are contrary to the meaning and effect of the case of *Arroyo* v. *Puerto Rico Transportation Authority,* 164 F. 2d 748 (C.C.A. 1st), and *Federal Dep. Ins. Corp.* v. *George-Howard,* 153 F. 2d 591 (C.C.A. 8th).

It is submitted that the questions are, therefore, of such importance and gravity that they should be resolved by this court at the earliest opportunity.

IV.

PRAYER.

Wherefore, your petitioner respectfully prays that a Writ of Certiorari may issue out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and proceedings of said Circuit Court of Appeals in the within case, numbered on the docket of said Court as No. 9291, to the end that said judgment of said Circuit Court of Appeals may be reviewed by this Court, as provided by law, and that said judgment of said Circuit Court of Appeals may be reversed by this Honorable Court and that your petitioners may have such other relief as to this Court may seem appropriate.

Central States Cooperatives, Inc.,
a corporation, Petitioner

By THOMAS G. MCBRIDE,
GEORGE E. BULLETT,
Counsel for Petitioners.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947.

No.

CENTRAL STATES COOPERATIVES, INC.,
a corporation,

Petitioner,

vs.

WATSON BROS. TRANSPORTATION COMPANY,
INC., a corporation,

Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinion of the Court Below.

The opinions of the United States Circuit Court of Appeals in the case at bar have been reported, 165 F. 2d 392. Copies appear in the transcript of record (R. 195, 203).

II.

The Jurisdiction of This Court.

A. The jurisdiction of this Court is invoked under Section 240 of the United States Judicial Code (43 Stat. 938 (1925); 28 U.S.C.A. 347), to review a judgment of

the Circuit Court of Appeals, which became final on January 20, 1948, by the foregoing petition for certiorari filed in this Court on April 16, 1948.

B. The matters involved in this case are wholly of a federal nature, as shown by the accompanying statement of the case, involving the questions (a) of the constitutionality of an act of Congress affecting the jurisdiction of the Federal district courts and (b) whether an act of Congress relating to the District of Columbia, giving jurisdiction to the federal district courts in suits involving citizens of the District, is a law of the United States to which the judicial power of the United States extends under Art. III, Sec. 2 of the Constitution.

III.

Statement of Case.

The central question presented by this petition for certiorari is whether the act of Congress granting to the district courts of the United States jurisdiction to hear cases brought by or against citizens of the District of Columbia is constitutional.

The case arose in the Municipal Court of Chicago and was removed by the defendant to the United States District Court for the Northern District of Illinois, Eastern Division, whereby the defendant invoked the jurisdiction of the United States District Court under Section 24 (1) of the Judicial Code of the United States as amended by congress in 1940. After a decision by that court adverse to the defendant and while the cause was pending on defendant's appeal on the merits before the Circuit Court of Appeals for the Seventh Circuit, the defendant moved to reverse the judgment of the trial court, to remand the case with directions to the District Court to remand the case to

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the state court from which the cause was removed, contending in the Circuit Court of Appeals that the act of Congress, which the defendant had previously invoked to sustain the jurisdiction of the district court, was unconstitutional. The plaintiff sought to sustain the constitutionality of the act of Congress before the Circuit Court of Appeals on the ground that the amendment of 1940 to Section 24(1) of the Judicial Code was a "law of the United States" within the meaning of Art. III, Sec. 2, enacted by Congress in pursuance of Art. I, Sec. 8, Cl. 17 and 18 of the Constitution of the United States. The Circuit Court of Appeals for the Seventh Circuit held such Act unconstitutional and reversed and remanded the case to the District Court, with directions to the District Court to remand the cause to the state court. This petition for certiorari is filed to seek a review of the judgment of the Circuit Court of Appeals, to reverse the judgment of the Circuit Court of Appeals, to sustain the constitutionality of the act of Congress in question and the jurisdiction of the United States District Court in the case at bar.

IV.

Specification of Errors.

(1) The Circuit Court of Appeals erred in holding as a matter of law that Sec. 24(1) of the Judicial Code as amended by Congress in 1940, 54 Stat. 143 (1940), 28 U.S.C.A. Sec. 4(1) is unconstitutional.

(2) The Circuit Court of Appeals erred in reversing and remanding the cause with directions that the District Court remand the cause to the state court from which it was removed.

(3) The court erred in sustaining the motion of the defendant filed September 23, 1947 to reverse and remand

the cause with directions to the District Court to remand the cause to the state court from which it was removed.

(4) The court erred in not overruling the motion of the defendant filed September 23, 1947 to remand and reverse the judgment of the District court with directions to the District Court to remand the cause to the state court from which it was removed.

(5) The court erred in not considering the cause and rendering judgment in the cause on the merits in the appeal of the defendant from the judgment of the District court in favor of the plaintiff.

V.

Summary of the Argument.

1.

A. Art. III, Sec. 2 of the constitution of the United States, in providing that the judicial power of the United States shall extend to cases arising under the "constitution, the laws of the United States * * *," encompasses necessarily and by long established precedent all those laws enacted by congress under the constitutional grants of legislative power contained in Art. 1, Sec. 8, Cl. 1 to 18.

B. Thus, although Art. III, Sec. 2 does not specifically enumerate what are or shall be "laws of the United States," it has long been recognized that Congress may invest courts of the United States with jurisdiction of cases involving "federal questions," patent, copyright, interstate commerce or bankruptcy cases, for example, since acts of Congress on these subjects are "laws of the United States" within the grant of legislative power under Art. 1, Sec. 8.

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C. Thus, also, the 1940 amendment to Sec. 24(1) of the judicial code is a law of the United States within the meaning of Art. III, Sec. 2, because congress has power under Art. 1, Sec. 8, Cl. 17 to enact such legislation, so that the judicial power of the United States extends by virtue of Art. III, Sec. 2 to cases arising under such law.

2.

Art. I, Sec. 8, Cl. 17 vests in Congress power "to exercise exclusive legislation in all cases whatsoever over such district • • • as may • • • become the seat of the government of the United States • • •."

A. Congress in enacting legislation affecting the District of Columbia or its citizens,

(a) Acts not as a local legislature, but in its one high character as a national legislature;

(b) Creates, not local laws, but laws of the United States, which under Art. VI, Cl. 2 are the supreme law of the land;

(c) Creates laws binding the nation, like acts made in pursuance of other powers, and possessing obligation out of the ten miles square of the District of Columbia;

(d) Exercises power, including not only the powers that belong to Congress in respect to territory within a State, but also the powers of the State as well, a delegation which embraces full and unlimited jurisdiction, subject only to the prohibitions of the Constitution, to provide for the general welfare of citizens of the United States resident within the District of Columbia by any and every act of legislation which Congress may deem conducive to that end.

3.

Congress in exercising unlimited sovereign and exclusive powers under Art. I, Sec. 8, Cl. 17, in relation to the citizens of the United States resident in the District of Columbia, in order to provide them those privileges and immunities and to impose upon them those obligations essential to an ordered society of free people, has the function among other things to establish courts of justice with jurisdiction to entertain actions in law or in equity by or against citizens of the United States, residents of the District of Columbia.

A. In exercising this power of providing for the enforcement of private or civil rights of citizens of the United States resident in the District of Columbia by judicial proceeding in courts of the United States, Congress is acting not as a local but as a constitutional national legislature.

B. Congress is not limited in exercising such national sovereign powers, in relation to the citizens of the United States resident in the District of Columbia to vesting solely the courts of the District of Columbia with jurisdiction of causes brought by or against such citizens, but may vest all the courts of the United States with such jurisdiction.

C. Congress, as the only sovereign power over citizens of the District of Columbia under Art. I, Sec. 8, Cl. 17, in passing laws respecting their rights and obligations, has discretion, under Art. 1, Sec. 8, Cl. 18, in protecting such rights and enforcing such obligations, to vest courts of the United States with such jurisdiction of civil cases brought by or against citizens of the District of Columbia, as Congress deems most eligible and best adapted to attain the object.

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4.

A. The grant of judicial power in Art. III, Sec. 2 in cases arising under "the constitution, the laws of the United States" is independent of and is not limited by the later grant in cases involving "controversies • • • between citizens of different states."

B. The constitutionality of the statute in question rests upon the grant of judicial power extending to cases arising under "the laws of the United States", and this is sufficient.

5.

Aside from the above basis for the constitutionality of the amendment of 1940 Sec. 24(1) of the Judicial Code, a citizen of the United States resident in the District of Columbia, may properly be considered as one of the "citizens of different states" within the meaning and purpose of Art. III, Sec. 2 of the constitution of the United States, in the use of the words "between citizens of different states."

ARGUMENT.

1. A.

Art. III, Sec. 2 of the constitution of the United States, in providing that the judicial power of the United States shall extend to cases arising under the "constitution, the laws of the United States * * *," encompasses necessarily and by long established precedent all those laws enacted by congress under the constitutional grants of legislative power contained in Art. I, Sec. 8, Cl. 1 to 18.

This case presents the question of the constitutionality of the amendment of 1940 to Sec. 24 (1) of the judicial code, wherein the original jurisdiction of federal district courts in civil suits was extended to include suits between "citizens of different states, or citizens of the District of Columbia, the territory of Hawaii, or Alaska and any state or territory.

Section 24 (1) of the Judicial Code, as amended by Congress in 1940, 54 Stat. 143 (1940), 28 U.S.C.A., Sec. 41 (1), reads in part:

> "The district courts shall have original jurisdiction as follows: First. Of all suits of a civil nature, * * * where the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00 and * * * (b) is between citizens of different states or citizens of the District of Columbia, the Territory of Hawaii, or Alaska, and any State or Territory * * *"

Prior to the amendment of 1940, the statute did not contain the words "or citizens of the District of Columbia, the Territory of Hawaii, or Alaska and any state

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or Territory," and it had been held that the federal courts, in the absence of a federal question, were closed to citizens of the District of Columbia and territories. (*Hepburn* v. *Ellzey*, 6 U. S. (2 Cranch) 445, 452, 2 L. Ed. 332; *Barney* v. *City of Baltimore*, 73 U. S. (6 Wall.) 280, 18 L. Ed. 825; *Hooe* v. *Jamieson*, 166 U. S. 395, 17 S. Ct. 596, 41 L. Ed. 1049).

The same rule has been applied to one who leaves his domicile and establishes no other, *Pannill* v. *Roanoke Times Co.*, 252 Fed. 910 (1918); and to a naturalized citizen who abandons his domicile and returns to his native country, *Stein* v. *Fleischmann Co.*, 237 Fed. 679 (1916); and to a United States citizen domiciled in Canada, *Prentiss* v. *Brennan*, 2 Blanchf. 162, 19 Fed. Cas. 1278 No. 11,385 (C.C. N.Y. 1851); and to a citizen of an Indian territory, *Snead* v. *Sellers*, 13 C.C.A. 518, 66 Fed. 371 (C.C.A. 5th 1894); *Clark* v. *City of Peoria*, 13 Fed. 561 (C.C. Ill. 1882). See also *Paul* v. *Chilsoquie*, 70 Fed. 401 (C.C. Ind. 1895), affecting an unnaturalized Indian; and *Banker's Trust Co.* v. *Texas & Pacific Ry.*, 241 U. S. 295, 36 S. Ct. 569, 60 L. Ed. 1010 (1916), where the corporation was held to be a "citizen of the United States" but not a citizen of any state.

In the leading case, *Hepburn* v. *Ellzey*, above cited, the plaintiffs, citizens of the District of Columbia, brought an action in the then Circuit Court of the United States for the District of Virginia. The defendant, a citizen of Virginia, challenged the jurisdiction of the court on the ground that the requisite diversity of citizenship was lacking. There the Supreme Court was passing upon an *Act* of Congress which gave "jurisdiction to the circuit courts in cases between a citizen of the *state* in which the suit is brought, and a citizen of another *state*." (Act of September 24, 1789, 1 Stat. 73, Sec. 11) Chief Justice Marshall said:

> "The question * * * is, whether the plaintiffs, as residents of the District of Columbia, can maintain an action in the Circuit Court of the United States for the District of Virginia. This depends on the *Act of Congress* describing the jurisdiction to the Circuit Courts in cases between a citizen of the state in which the suit is brought, and a citizen of another state. To support the jurisdiction in this case, therefore, it must appear that Columbia is a state. * * * as the act of Congress obviously uses the word 'state' in reference to that term as used in the Constitution, it becomes necessary to inquire whether Columbia is a state in the sense of that instrument. The result of that examination is a conviction that the members of the American confederacy only are the states contemplated in the Constitution."

We would like to observe at this point that the question being examined here was not whether Congress had power to vest United States courts with such jurisdiction, but rather whether Congress had done so by the Act of September 24, 1789. Chief Justice Marshall, later in the same opinion wrote:

> "It is true that as citizens of the United States, and of that particular district which is subject to the jurisdiction of congress, it is extraordinary that the courts of the United States, which are open to aliens, and to the citizens of every state in the union, should be closed upon *them*. But this is a subject for legislative, not for judicial consideration."

It is to be noted that the Chief Justice did not hold that Congress was without power to vest jurisdiction in such cases in the courts of the United States, but did observe that it was up to Congress to grant or deny such jurisdiction to the courts of the United States. In its 1940 amendment to the diversity statute, the Congress accepted the invitation extended in 1805 by Chief Justice Marshall and made the subject one of legislative con-

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sideration. We have the "*legislative* consideration" in the form of a new Act here under consideration. In the *Ellzey* case, the Congressional Act held not to grant the District of Columbia citizens recourse to the Federal court, was couched in the same limited phraseology as the Constitution, *i.e.*, "citizens of different *states.*" Now Congress has become specific and included citizens of territorities *and the District of Columbia.* No longer need we lament the unfairness of an Act which makes our courts open to "aliens" and "closed" to citizens of the District of Columbia. One would have thought that this would present the problem in such a different light that there would have been no question of the constitutionality of the amendment.

The amendment was adopted to afford to citizens of the United States resident in the District of Columbia and territorities the valuable privilege of access to the federal courts enjoyed by citizens of the states in diversity cases, consistent with a basic principle of American government, that equality of privilege and freedom from discrimination is an inalienable right of all citizens of the United States. Congress by this amendment was for the first time providing a tribunal to a considerable segment of its citizens wherein they could protect and vindicate their rights and enjoy this foremost of American privileges of being treated on terms of equality in the protection and defense of their fundamental rights as citizens to life, liberty and property.

The manifest purpose of the constitutional provision conferring jurisdiction on the federal courts in cases involving citizens of different states was to secure the citizen against local prejudice which might injure him if he were compelled to litigate controversies in the tribunals of his adversary's state. The question involved

is not a theoretical one, but one of great practical significance. To deny to a citizen of the District the right to resort to the federal courts, means that he must seek justice in a court of the state of his adversary, where he will find, in many of the states, that trial by jury has been stripped of many of its safeguards and the judge has been denied the common law powers necessary to the proper administration of justice. (See article by Judge Merrill E. Otis, Journal of American Judicature Society, vol. 21, p. 105 *et seq.*). To require a non resident to try his case in such a tribunal is not only to turn him over to the tender mercies of a local jury, without power in the presiding judge to counteract the appeals to prejudice of local counsel, it is also to deny to him the sort of trial by jury which as a citizen of the United States he is entitled to have in the federal courts. (*Herron* v. *Southern Pac. Ry. Co.*, 283 U. S. 91, 95, 51 S. Ct. 383, 75 L. Ed. 857; *Patton* v. *United States*, 281 U. S. 276, 288, 50 S. Ct. 253, 74 L. Ed. 854, 70 A.L.R. 263; *Capital Traction Co.* v. *Hof*, 174 U. S. 1, 13-16, 19 S. Ct. 580, 43 L. Ed. 873; *United States* v. *Philadelphia & R. R. Co.*, 123 U. S. 113, 114, 8 S. Ct. 77, 31 L. Ed. 138; *United States* v. *Fourteen Packages of Pins*, 1 Gilp. 235, 25 Fed. Cas. 1182, 1189, No. 15,151).

The question is whether the framers of the constitution failed by oversight to vest in the federal government power to apply this principle of equality in the case of that unique group of United States citizens resident in the District of Columbia and the territorities who are not citizens of any state. As Justice Evans wrote in his dissenting opinion in the court below (R. 203):

> "• • • That result, however, leaves such a sour taste, it is so contrary to the practice of the forefathers to deal differently with one group of citizens than with another, that I not only pause but must reject forthwith any construction which would at-

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tribute to the founders an intent to treat a large part of our population—now nearly a million—so as to deny them what is given to all other citizens in other states.

"I can not attribute any such intent to them.

"The construction of the majority must be accepted, if at all, solely on the ground of oversight by the framers of Article III. As to that view, the outstanding thought is that no construction of the Constitution should be adopted which attributes to silence or failure to specifically mention a group, controlling weight, over a clear intention to treat all alike.

"The entire scheme of the Federal Government as the finished Constitution bespeaks, is equality of the citizens. The two dominating thoughts that run throughout its length and breadth, and through all the debates leading to its final adoption, are (a) the supremacy of the citizen, and (b) the equality of the citizens.

"The majority opinion denies to the citizen of the District of Columbia a right which the citizen of every state in the Union enjoys. He may not sue in a Federal Court on the basis of diversity of citizenship to protect his rights, if he be a citizen of the District of Columbia. Of all the territories in which to deny a citizen that right, the District of Columbia seems to me to be the most illogical and unjustifiable.* * *"

We submit the framers cannot be charged with such oversight, and that the Chief Justice Marshall was on sound ground in observing in effect that the Congress might provide the federal courts with such jurisdiction. The purpose of this argument is, by an analysis of the pertinent constitutional provisions as interpreted by judicial precedent, to show that Congress has been granted such power.

At the outset it is necessary, we believe, to recognize, first, that Sec. 24 (1) of the judicial code in granting

diversity jurisdiction, as it existed prior to 1940, *rested solely* upon that portion of Art. III, Sec. 2 reading "controversies • • • between citizens of different states," and second, that the 1940 amendment *did not rest upon this diversity clause* of Art. III, Sec. 2, in vesting jurisdiction in the district courts of suits between citizens of the District of Columbia and citizens of any state, but *upon that portion* of Art. III, Sec. 2 reading, "The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States. • • •"

The cases referred to in the Petition for Certiorari herein, holding against the constitutionality of the Act in question, as well as the decision sought to be reviewed, have weighted the problem only by considering whether the amendment could be supported by the diversity clause of Art. III, Sec. 2, and by discarding consideration of Art. I, Sec. 8, Cl. 17 with the inadequate observation that Congress is limited in the vesting of judicial power in federal district courts outside the District of Columbia to those cases enumerated in Art. III, Sec. 2. We do *not contend* here that Congress has authority beyond the limits of Art. III, Sec. 2 to vest judicial power in federal district courts outside the District of Columbia; but we *do contend* that congress has authority under Art. III, Sec. 2 to extend the judicial power of such courts to all cases *arising* under the *constitution* and *laws of the United States. This is the crucial point the cases have missed.*

And when the meaning of the phrase of Art. III, Sec. 2, "cases • • • arising under this constitution, the laws of the United States," is considered it is realized at once that recourse must be had to the enumerated powers of Congress contained in Art. I, Sec. 8 to determine

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what are "laws of the United States" to which the judicial power of the United States extends under Art. III, Sec. 2. This should not have been a difficult legal or mental process, nor does this present anything new or foreign to constitutional law and precedents.

When Art. III, Sec. 2 authorizes Congress to invest in the courts of the United States jurisdiction in "all cases in law and equity, arising under this constitution, the laws of the United States," it lays the basis for the long and widely exercised power of congress to grant to the federal courts jurisdiction of cases involving "federal questions." Laws of congress enacted under Art. I, Sec. 8, create and are the basis for determining in part what are the "federal questions" to which the judicial powers of the federal courts extend under and by virtue of Art. III, Sec. 2. Thus, laws of Congress relating to interstate commerce, patents and bankruptcy based on Art. I, Sec. 8, create "federal questions" and cases arising thereunder lie within the jurisdiction of federal courts. Thus, also, laws of Congress under Art. I, Sec. 8, Cl. 17, create federal questions, so that when Congress by the 1940 amendment extended to federal courts jurisdiction of suits between citizens of the District of Columbia and the states, *it made the residence or domicile in the District of Columbia of citizens of the United States a federal question.* This is not unusual since residence and domicile are often made jurisdictional matters, (*United States* v. *Union Pacific Rd. Co.*, 98 U. S. 569, 602, 25 L. Ed. 143) and are often the determining factors in problems of taxation, inheritance and other rights, privileges and immunities of citizens. (*District of Columbia* v. *Murphy*, 314 U. S. 441, 62 S. Ct. 303, 86 L. Ed. 329).

The competency of Congress to determine the existence of a federal question has been upheld. In *Federal*

Deposit Insurance Corp. v. *George-Howard,* 153 F. 2d 591 (C.C.A. 8th 1946), it was held that all suits to which the Corporation is a party are to be deemed to arise under the laws of the United States. The court observed in *Federal Reserve Bank of Richmond* v. *Kalin,* 77 F. (2d) 50 (C.C.A. 4th 1935) that "all suits to which any Federal Reserve Bank shall be a party shall be deemed to arise under the laws of the United States." (Compare also U. S. Rev. Stat. (1873) Ses. 563, par. 18; Act of July 1, 1898, c. 541, Sec. 2, 23, 30 Stat. at L. 545, 552; Act of March 3, 1911, c. 23, Sec. 24, par. 19, 36 Stat. at L. 1093, 28 U.S.C.A. Sec. 41 (19) whereby district courts are given original jurisdiction of "all matters and proceedings in bankruptcy"). The Constitution, for instance, gives the Congress the specific power to make uniform laws with respect to bankruptcy. It has been held that no actual construction of a law of the United States need be involved in bankruptcy cases. For an excellent and comprehensive article we refer to Forrester, The Nature of A "Federal Question," 16 Tulane L. Rev. 362 (1942).

To the same effect is *Arroyo* v. *Puerto Rico Transportation Authority,* 164 F. 2d 748.

In the report of the House Committee on the amendment of 1940 (H.R. No. 1756, March 12, 1940, Committee on the Judiciary, 76th Congress, 3rd session) it appears that Congress rested its grant of jurisdiction of cases involving District of Columbia citizens not upon the diversity of citizenship clause of Art. III, Sec. 2, but upon the general grant of judicial power contained in Art. III, and upon its power to determine a federal question under Art. I, Sec. 8, Cl. 17, within the meaning of Art. III, Sec. 2. This reads in part as follows:

> "The federal district and circuit courts are created by Congress under the constitutional authority

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granted in Article III. These courts receive and exercise the judicial power granted by the Constitution. This judicial power cannot be increased or limited simply by an act of Congress.

"This article, however, must be construed in connection with other provisions of the Constitution. For example, in Article I, section 8, it is provided:

> 'The Congress shall have Power * * * To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States.'

"*That the Congress under this provision has complete authority to govern the District of Columbia and the affairs of its citizens is well settled.* This right is, of course, subject to constitutional restraints so far as applicable.

"The purpose of Article III was to create an independent judiciary with powers conferred directly by the Constitution. These powers cannot be taken away from Congress. The Constitution guarantees to certain persons the right to demand the exercise of these powers under certain circumstances. For example, a citizen of a State may do so when involved in a case or controversy with a citizen of another State. The mere fact that the Constitution guarantees this right to the citizens of a State in no way prohibits the Congress from extending that same privilege to others who are not technically citizens of a State. This does not mean that Congress may indiscriminately add to the jurisdiction or authority of the courts. Its powers to so add must in any case be found in the Constitution." (Italics supplied).

The principle in the minds of the framers of the Constitution in extending under Art. III to the federal judiciary power to entertain all cases arising under the

constitution and laws of the United States, was, in establishing a federal government, to provide that the judicial power be co-extensive with the legislative, and to provide that the laws of the United States be construed and applied in the courts of that federal government rather than in state courts to the advantage of the states and to the prejudice and confusion of the federal government. (3 Elliott, Debates in the Several State Conventions on the Adoption of the Federal Constitution, 2d Ed. 1836, note 8 at p. 532, note 8 at p. 158, note 8 at p. 553; Forrester, The Nature of a "Federal Question", 16 Tulane Law Review, 362, 366). In the debate before the Virginia convention, John Marshall, later the great Chief Justice, said:

> "With respect to its cognizance in all cases arising under the Constitution and the laws of the United States, he says that, the laws of the United States are paramount to the laws of the particular states, there is no case but what this will extend to. Has the government of the United States power to make laws on every subject? * * * Can they go beyond the delegated powers?" 3 Elliott, 2nd Ed. p. 553, note 8.

The "delegated powers" include, of course, the powers delegated to Congress under Art. 1, Sec. 8, which define the limits of the laws of the United States to which judicial power of the federal courts may be extended by Congress. Extensive consideration was given to this problem by Chief Justice Marshall in *Cohens* v. *Virginia*, 19 U. S. (6 Wheat.) 264, 5 L. Ed. 257, where he wrote, p. 381:

> "If it could be doubted, whether, from its nature, it [the federal government] were not supreme, in all cases where it is empowered to act, that doubt would be removed by the declaration, that 'this constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties

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made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby; anything in the constitution or laws of any state to the contrary notwithstanding.' This is the authoritative language of the American people; and, if gentlemen please, of the American states. It marks, with lines too strong to be mistaken, the characteristic distinction between the government of the Union, and those of the states. The general government, though limited as to its objects, is supreme with respect to those objects. This principle is a part of the constitution; and if there be any who deny its necessity, none can deny its authority. * * *

(p. 382) "The powers of the Union, on the great subjects of war, peace and commerce, and on many others, are in themselves, limitations of the sovereignty of the states; but in addition to these, the sovereignty of the states is surrendered, in many instances, where the surrender can only operate to the benefit of the people, and where, perhaps, no other power is conferred on congress than a conservative power to maintain the principles established in the constitution. The maintainence of these principles in their purity, is certainly among the great duties of the government. One of the instruments by which this duty may be peaceably performed, is the judicial department. It is authorized to decide all cases of every description, arising under the constitution or laws of the United States. * * *"

The same judge recognized the sound political principle on which this grant of judicial power, co-extensive with the legislative power, was founded when he said further in *Cohens* case (page 384):

"* * * While weighing arguments drawn from the nature of government, and from the general spirit of an instrument, and urged for the purpose of narrowing the construction which the words of that instrument seem to require, it is proper to place in

the opposite scale those principles, drawn from the same sources, which go to sustain the words in their full operation and natural import. One of these, which has been pressed with great force by the counsel for the plaintiffs in error, is, that the judicial power of every well-constituted government must be co-extensive with the legislative, and must be capable of deciding every judicial question which grows out of the constitution and laws. If any proposition may be considered as a political axiom, this, we think, may be so considered. * * *"

And further (page 415):

"* * * The propriety of intrusting the construction of the constitution, and laws made in pursuance thereof, to the judiciary of the Union, has not, we believe, as yet, been drawn into question. It seems to be a corollary from this political axiom, that the federal courts should either possess exclusive jurisdiction in such cases, or a power to revise the judgment rendered in them, by the state tribunals. If the federal and state courts have concurrent jurisdiction in all cases arising under the constitution, laws and treaties of the United States; and if a case of this description brought in a state court cannot be removed before judgment, nor revised after judgment, then the construction of the constitution, laws and treaties of the United States, is not confided particularly to their judicial department, but is confided equally to that department and to the state courts, however they may be constituted. 'Thirteen independent courts,' says a very celebrated statesman (and we have now more than twenty such courts) 'of final jurisdiction over the same causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.'

(p. 416) "Dismissing the unpleasant suggestion, that any motives which may not be fairly avowed, or which ought not to exist, can ever influence a state or its courts, the necessity of uniformity, as

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well as correctness in expounding the constitution and laws of the United States, would itself suggest the propriety of vesting in some single tribunal, the power of deciding, in the last resort, all cases in which they are involved. * * *"

Having referred to the political basis and reasons for the vesting in the federal government judicial power in all cases arising under the constitution and laws of the United States, we now turn to the question as to what are to be considered cases *arising under* such constitution and laws. This question was the subject of extensive argument of counsel and careful consideration of the court in the above cited *Cohens* case where Chief Justice Marshall said (pages 378-80):

"* * * The counsel for the defendant in error have stated, that the cases which arise under the constitution must grow out of those provisions which are capable of self-execution; examples of which are to be found in the 2d section of the 4th article, and in the 10th section of the 1st article. A case which arises under a law of the United States must, we are likewise told, be a right given by some act which becomes necessary to execute the powers given in the constitution, of which the law of naturalization is mentioned as an example.

"The use intended to be made of this exposition of the first part of the section, defining the extent of the judicial power, is not clearly understood. If the intention be merely to distinguish cases arising under the constitution, from those arising under a law, for the sake of precision in the application of this argument, these propositions will not be controverted. If it be, to maintain that a case arising under the constitution, or a law, must be one in which a party comes into court to demand something conferred on him by the constitution or a law, we think, the construction too narrow. A case in law or equity consists of the right of the one party, as well as of the other, and may truly be said to arise

under the constitution or a law of the United States, whenever its correct decision depends on the construction of either. Congress seems to have intended to give its own construction of this part of the constitution in the 25th section of the judiciary act; and we perceive no reason to depart from that construction.

"The jurisdiction of the court, then, being extended by the letter of the constitution to all cases arising under it, or under the laws of the United States, it follows, that those who would withdraw any case of this description from that jurisdiction, must sustain the exemption they claim, on the spirit and true meaning of the constitution, which spirit and true meaning must be so apparent as to overrule the words which its framers have employed. • • •"

Within the first classification so made, that of claiming a right conferred by the constitution or law, said by Marshall to be too narrow, lies the case at bar where the plaintiff claims the right to maintain its action in the federal court. The plaintiff did not seek removal of the cause from the state court, but, when the defendant succeeded in bringing about the removal of the cause to the federal district court, the plaintiff proceeded with the cause, obtained judgment in its favor at the hands of the court and now defends the jurisdiction of the court to have received and entertained the cause.

Also within the second classification so made, that of a decision resting upon the construction of the constitution or law, lies the case at bar, *because* the construction of the meaning and effect of the constitution Art. III, Sec. 2, and Art. I, Sec. 8, Cl. 17 and 18 of the constitution are involved, *and because further* the operation and effect of Sec. 24(1) of the Judicial Code as amended in 1940 as a law of the United States are also involved. Upon the construction of both depends

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the right of the plaintiff to maintain its action in the federal district court.

In *Osborn* v. *United States Bank,* 22 U. S. (9 Wheat.) 737, 6 L. Ed. 204, the Bank of the United States brought an action in the federal circuit court in Ohio to restrain the state auditor from proceeding under the laws of Ohio to levy and collect a tax upon the business of the bank. The first question arose as to the jurisdiction of the court to entertain the suit. The act creating the bank gave the right to sue or be sued in courts of the United States. In considering the constitutionality of the act vesting the courts with such jurisdiction, Chief Justice Marshall wrote in the opinion:

> (p. 818): "We will now consider the constitutionality of the clause in the act of incorporation, which authorizes the bank to sue in the federal courts. In support of this clause, it is said, that the legislative, executive and judicial powers of every well-constructed government, are co-extensive with each other; that is, they are potentially co-extensive. The executive department may constitutionally execute every law which the legislature may constitutionally make, and the judicial department may receive from the legislature the power of construing (p. 819) every such law. All governments which are not extremely defective in their organization, must possess, within themselves, the means of expounding, as well as enforcing, their own laws. If we examine the constitution of the United States, we find, that its framers kept this great political principle in view. The 2d article vests the whole executive power in the president; and the 3rd article declares, 'that the judicial power shall extend to all cases in law and equity, arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.' This clause enables the judicial department to receive jurisdiction to the full extent of the constitution, laws and treaties of the United States, when any

question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it, by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the constitution declares, that the judicial power shall extend to all cases arising under the constitution, laws and treaties of the United States.

"The suit of the *Bank of the United States* v. *Osborn and others,* is a case, and the question is, whether it arises under a law of the United States? The appellants contend, that it does not, because several questions may arise in it, which depend on the general principles of the law, not on any act of congress. If this were (p. 820) sufficient to withdraw a case from the jurisdiction of the federal courts, almost every case, although involving the construction of a law, would be withdrawn; and a clause in the constitution, relating to a subject of vital importance to the government, and expressed in the most comprehensive terms, would be construed to mean almost nothing. There is scarcely any case, every part of which depends on the constitution, laws or treaties of the United States. * * *

(p. 821) "* * * We ask, then, if it can be sufficient to exclude this jurisdiction, that the case involves questions depending on general (p. 822) principles? A cause may depend on several questions of fact and law. Some of these may depend on the construction of a law of the United States; others on principles unconnected with that law. * * *

(p. 823) "* * * We think, then, that when a question to which the judicial power of the Union is extended by the constitution, *forms an ingredient of the original cause,* it is in the power of congress to give the circuit courts jurisdiction of that cause, although other questions of fact or of law may be involved in it. * * *" (Emphasis ours).

The law of the United States involved in the *Osborn* case had only to do with the right of the corporation

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to sue in the federal court granted by the act of Congress; the constitutional question was the power of Congress to establish the bank and the power of the state to tax the bank. In the case at bar the law of the United States involved is that statute of Congress granting to citizens of the United States resident in the District of Columbia the right to sue in federal district courts, and the constitutional question is the power of Congress under Art. I, Sec. 8, Cl. 17 to act as the sovereign power over citizens of the District of Columbia and establish a judicial forum for such citizens. The judicial power of the federal court to entertain the suit of the Bank of the United States rested on that portion of Art. III, Sec. 2 extending the judicial power of federal courts to cases arising under the constitution and laws of the United States. If Congress had power to establish the bank it had power to vest the federal courts with jurisdiction of suits brought by the bank. Likewise if Congress has exclusive sovereign power over citizens of the United States resident in the District of Columbia it may vest federal courts with jurisdiction of suits brought by or against such District of Columbia citizens.

The case at bar lies also within the ruling in the case of *Starin* v. *New York,* 115 U. S. 248, 6 S. Ct. 28, 29 L. Ed. 388, where the court wrote (p. 257):

> "The character of a case is determined by the questions involved. *Osborn* v. *Bank of United States,* 9 Wheat. 737, 824. If from the questions it appears that some title, right, privilege, or immunity, on which the recovery depends, will be defeated by one construction of the Constitution or a law of the United States, or sustained by the opposite construction, the case will be one arising under the Constitution or laws of the United States, within the meaning of that term as used in the act of 1875; otherwise not. Such is the effect of the decisions on this subject. *Cohens* v. *Virginia,* 6 Wheat. 264, 379; *Osborn* v. *Bank of United States,* 9 Wheat. 737,

824; *The Mayor* v. *Cooper*, 6 Wall. 247, 252; *Gold Washing & Water Co.* v. *Keyes*, 96 U. S. 199, 201; *Tennessee* v. *Davis*, 100 U. S. 257, 264; *Railroad Co.* v. *Mississippi*, 102 U. S. 135, 140; *Ames* v. *Kansas*, 111 U. S. 449, 462; *Kansas Pacific* v. *Atchison Railroad*, 112 U. S. 414, 416; *Provident Savings Co.* v. *Ford*, 114 U. S. 635, 641; Pacific Railroad Removal Cases, 115 U. S. 1, 11."

In *Tennessee* v. *Davis*, 100 U. S. 257, 25 L. Ed. 648 (Tenn. 1880), we read:

> "A case arising under the Constitution and laws of the United States is not merely one where a party comes into court to demand something conferred upon him by the Constitution or a law or treaty. A case consists of the right of one party as well as of the other, and may truly be said to arise under the Constitution or a law or a treaty of the United States whenever its correct decision depends upon the construction of either. *Cases arising under the laws of the United States are such as grow out of the legislation of Congress, whether they constitute the right or privilege, or claim or protection, or defense of the party, in whole or in part, by whom they are asserted.*" (Emphasis ours).

In *Old Colony Trust Co.* v. *Commissioner of Internal Revenue*, (Mass. 1929), 279 U. S. 716, 49 S. Ct. 499; 73 L. Ed. 918, mandate conformed to 33 F. 2d 891, we read:

> "'This clause enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties of the United States, when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the Constitution declares that the judicial power shall extend to all cases arising under the Constitution, laws, and treaties of the United States.'"

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We wish to quote from the case of *In re Lennon*, 166 U. S. 548, 553, 17 S. Ct. 658, 41 L. Ed. 1110, in which the opinion in part reads:

> "• • • It has been frequently held by this court that a case arises under the Constitution and laws of the United States, whenever the party plaintiff sets up a right to which he is entitled under such laws, which the parties defendant deny to him, and the correct decision of the case depends upon the construction of such laws. • • •"

In *Gully* v. *First National Bank*, 299 U. S. 109, 57 Sup. Ct. 96, 81, L. Ed. 70, (1936), the court has restated the rule as to how and when a case arises under the Constitution or laws of the United States in Justice Cordozo's opinion, which reads in part (p. 112):

> "How and when a case arises 'under the Constitution or laws of the United States' has been much considered in the books. Some tests are well established. To bring a case within the statute, a right or immunity created by the Constitution or laws of the United States must be an element, and an essential one, of the plaintiff's cause of action. *Starin* v. *New York*, 115 U. S. 248, 257; *First National Bank* v. *Williams*, 252 U. S. 504, 512. The right or immunity must be such that it will be supported if the Constitution or laws of the United States are given one construction or effect, and defeated if they receive another. *Ibid; King County* v. *Seattle School District*, 263 U. S. 361, 363, 364. A genuine and present controversy, not merely a possible or conjectural one, must exist with reference thereto (*New Orleans* v. *Defiance*, 153 U. S. 184, 191; *Joy* v. *Water Co.* v. *Defiance*, 191 U. S. 184, 191; *Joy* v. *St. Louis*, 201 U. S. 332; *Denver* v. *New York Trust Co.*, 229 U. S. 123, 133), and the controversy must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal. *Tennessee* v. *Union & Planters Bank*, 152 U. S. 454; *Louisville & Nashville R. Co.* v. *Mottley*, 211

U. S. 149; *The Fair* v. *Kohler Die & Specialty Co.*, 228 U. S. 22, 25; *Taylor* v. *Anderson*, 234 U. S. 74. • • •"

The case at bar falls within these rules. The right here created by the laws of the United States pursuant to the constitution is that of suing in the federal courts; it will be supported if the constitution or laws of the United States in question are given one construction or effect and defeated if they receive another; a genuine and present controversy exists with reference thereto; and the plaintiff's citizenship of the District of Columbia is disclosed by the original complaint (R. 3).

1. B.

Thus, although Art. III, Sec. 2 does not specifically enumerate what are or shall be "laws of the United States," it has long been recognized that Congress may invest courts of the United States with jurisdiction of cases involving "federal questions," of patent, copyright, interstate commerce or bankruptcy cases, for example, since acts of Congress on these subjects are "laws of the United States" within the grant of legislative power under Art. I, Sec. 8.

It may be observed that Art. III, Sec. 2 does not anywhere make express reference to bankruptcy matters, patent or copyright cases, interstate commerce matters such as trade and labor regulations, as being within the judicial power of the United States. However, the Judicial Code, Sec. 24 (28 U.S.C.A. Sec. 41), provides:

"The district court shall have original jurisdiction as follows: • • •

(7) Of all suits at law or in equity, arising under the patent, copyright and the trade mark laws.

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(8) Of all suits and proceedings arising under any law regulation commerce. • • •

(19) Of all matters and proceedings in bankruptcy."

Sec. 48 of the Judicial Code (28 U.S.C.A. Sec. 109) provides:

"In suits brought for the infringement of letters patent the district courts of the United States shall have jurisdiction, in law or in equity, in the district of which the defendant is an inhabitant, or in any district in which the defendant, whether a person, partnership, or corporation, shall have committed acts of infringement and have a regular and established place of business. • • •"

The jurisdiction granted in the above referred to Sections 24 and 48 of the Judicial Code can be sustained only under that portion of Article III, Sec. 2, which provides that the judicial power of the United States shall extend to cases arising under the constitution and laws of the United States, which is commonly known as the "federal question" clause of the constitution. Cases in law and equity, therefore, arising under such interstate commerce, bankruptcy, patent or copyright laws of the United States, enacted by congress under and by virtue of Art. 1, Sec. 8 of the constitution of the United States, are cases to which the judicial power of the United States extends under Art. III, Sec. 2, Cl. 1, when jurisdiction thereof is vested by congress in the courts of the United States. (Bankruptcy cases: *Schumacher* v. *Beeler*, 293 U. S. 367, 55 S. Ct. 230, 79 L. Ed. 433; *In re: Chicago R. I. & P. Ry. Co.*, 72 F. 2d 443 (C.C.A. 7th). Patent cases: *Healy* v. *Sea Gull Specialty Co.*, 237 U. S. 479, 35 S. Ct. 658, 59 L. Ed. 1056; *Henry* v. *A. B. Dick Co.*, 224 U. S. 1, 32 S. Ct. 364, 56 L. Ed. 645, Ann. Cas. 1913 D, 880; *The Fair* v. *Kohler Die & Specialty Co.*, 228 U. S. 22, 57 L. Ed. 716, 33 S. Ct. 410; *Cinema Patents*

Co. v. *Columbia Pictures Corp.*, 62 F. 2d 310, (C.C.A. 9th 1932). Commerce cases: *Weiss* v. *Los Angeles Broadcasting Co.*, 163 F. 2d 313; *Lucking* v. *Detroit & Cleveland Nav. Co.*, 284 F. 497, aff. 1924, 265 U. S. 346, 44 S. Ct. 504, 68 L. Ed. 1047; *Interstate Commerce Commission* v. *Brimson*, 154 U. S. 447, 468, 14 S. Ct. 1125, 38 L. Ed. 1047).

Interesting in this connection, also, is the case of *Yakus* v. *United States*, 321 U. S. 414, 64 S. Ct. 660, 88 L. Ed. 834, where the Supreme Court recognized that congress had power to vest an emergency court of appeals with jurisdiction to determine validity of price regulations under the Emergency Price Control Act and to vest in district courts of the United States jurisdiction to hear criminal cases involving violations thereof. Congress was empowered to vest such courts with jurisdiction in such cases because the Emergency Price Control Act was a law of the United States under the war powers of congress, granted in Art. I, Sec. 8, to which the judicial power of the United States extended under Art. III, Sec. 2, Cl. 1. The same observations may be made concerning other sub-paragraphs of Sec. 24 of the Judicial Code granting to the district courts original jurisdiction in various classes of cases involving "federal questions" not specifically referred to in Art. III, Sec. 2.

1. C.

Thus, also, the 1940 amendment to Sec. 24 (1) of the judicial code is a law of the United States within the meaning of Art. III, Sec. 2, because congress has power under Art. I, Sec. 8, Cl. 17 to enact such legislation, so that the judicial power of the United States extends by virtue of Art. III, Sec. 2 to cases arising under such law.

The question arose directly in *Cohens* v. *Virginia*, 19 U. S. (6 Wheat.) 264, 5 L. Ed. 256, whether an act

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of Congress regulating lotteries and relating to the District of Columbia was a mere local law or a law of the United States. The plaintiff in error, Cohens, had been convicted and fined by a Virginia court for the violation of a law of that state prohibiting lotteries in the state. The lottery had been conducted across the line between Virginia and the District of Columbia and Cohens claimed the benefit of the District of Columbia law permitting lotteries. He sued out a writ of error from the Supreme Court of the United States to the Virginia court to review the case. A motion was made to dismiss the writ of error on the ground that the Supreme Court was without appellate jurisdiction. It was urged that the Supreme Court had jurisdiction on the ground that the appellate judicial power of the court extended under Art. III, Sec. 2 to cases arising under the laws of the United States and that there was involved in the case the construction and application of a law of the United States. The motion to dismiss was denied and the court considered the case on the merits. In considering the motion the court held that an act of congress relating to the District of Columbia under Art. I, Sec. 8, Cl. 17 was not a local law but a law of the United States, and as such was the supreme law of the land, was binding on all of the United States, operated and possessed obligation out of the ten miles square of the District of Columbia and as a "law of the United States" was a basis for judicial power under Art. III, Sec. 2 and affected the jurisdiction of courts of the United States. Chief Justice Marshall in his opinion wrote:

> (p. 378) "The second section of the third article of the constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the courts of the Union in two classes of cases. In the first, their jurisdiction depends on the character of the cause, whoever may be the parties.

This class comprehends all 'cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.' This class extends the jurisdiction of the court to all the cases described, without making in its terms any exception whatever, and without any regard to the condition of the party. If there be any exception, it is to be implied against the express words of the article.

(p. 379) "The jurisdiction of the court, then, being extended by the letter of the constitution to all cases arising under it, or under the laws of the United States, it follows that those who would withdraw any case of this description from that jurisdiction, must sustain the exemption they claim on the spirit and true meaning of the constitution, which spirit and true meaning must be so apparent as to overrule the words which its framers have employed. • • •

(p. 424) "• • • They deny that the act of congress, on which the plaintiff in error relies, is a law of the United States; or, if a law of the United States, is within the second clause of the sixth article.

"*In the enumeration of the powers of congress, which is made in the eighth section of the first article, we find that of exercising exclusive legislation over such district as shall become the seat of government.* This power, like all others which are specified, is conferred on congress *as the legislature of the Union;* for, strip them of that character, and they would not possess it. *In no other character can it be exercised.* In legislating for the district, they necessarily preserve the character of the legislature of the Union; for, *it is in that character alone that the constitution confers on them this power of exclusive legislation.* This proposition need not be enforce. • • • If Congress were to be consid-

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ered merely as the local legislature for the fort or other place in which the offense might be committed, then this principle would apply to them as to other local legislatures, and the felon who should escape out of the fort, or other place, in which the felony may have been committed, could not be apprehended by the marshal, but must be demanded from the executive of the state. But we know that the principle does not apply; and the reason is, *that congress is not a local legislature, but exercises this particular power, like all its other powers, in its high character, as the legislature of the Union.* The American people thought it a necessary power, and they conferred it for their own benefit. *Being so conferred, it carries with it all those incidental powers which are necessary to its complete and effectual execution.*" (Emphasis ours).

The same principle was applied in the case of *Battle* v. *United States,* 209 U. S. 36, 28 S. Ct. 422, 52 L. Ed. 670, in deciding that an act of congress enacted by virtue of Art. I, Sec. 8, Cl. 17 is a law of the United States to which the judicial power of the United States extends. Here a crime was committed in a post office cite ceded to the United States under Art. I, Sec. 8, Cl. 17. The offender was tried and convicted in the *United States District Court of Georgia,* and assigned error that the court was without jurisdiction. Justice Holmes wrote in his opinion:

"This case comes up on a writ of error to the United States Circuit Court, after a conviction of the plaintiff in error of murder without capital punishment. The chief error assigned is that the court proceeded without jurisdiction—an objection taken by demurrer and renewed in other forms. The crime was committed upon land bought by the United States in the city of Macon, on which it was building a post office and courthouse, and over which the State of Georgia had ceded jurisdiction; but it is said that murder in a post office of the United States *has not*

been made an offense against the United States, whatever might be the power of Congress if it saw fit to put it forth.

"There can be no doubt of the power of Congress to purchase land within a State for post offices or courts, by consent of the legislature of the State, and to exercise exclusive legislation over the same. Post offices are among the 'other needful buildings' for the erection of which, as well as of 'forts, magazines, arsenals, dock-yards,' it is assumed that land will be bought, and for which land has been bought by the Government all over the United States. Const., Art. I, Sec. 8, Cl. 17. Indeed, this is not denied. The power to establish post offices is given by Art. I, Sec. 8, Cl. 7, in terms. See *Kohl* v. *United States*, 91 U. S. 367, 372; *Burt* v. *Merchants' Insurance Co.*, 106 Massachusetts, 356; *Trombley* v. *Humphrey*, 23 Michigan, 471, 475; *Sinks* v. *Reese*, 19 Ohio St. 306. The exclusive legislative power and jurisdiction of the United States is equally clear. *Fort Leavenworth R. R. Co.* v. *Lowe*, 114 U. S. 525; *Benson* v. *United States*, 146 U. S. 325. *So that the question is only whether the statutes of the United States extend to this case, which was the question intended to be raised.*

"By Rev. Stat. Sec. 5339, 'Every person who commits murder—First. Within any fort, arsenal, dock-yard, magazine, or in any other place or district of country under the exclusive jurisdiction of the United States; * * * shall suffer death'; and by act of January 15, 1897, c. 29, Sec. 1, 29 Stat. 487, in such cases 'the jury may qualify their verdict by adding thereto "without capital punishment"' whereupon the sentence is imprisonment at hard labor for life. The jurisdiction of the United States courts under these sections is exclusive. Rev. Stat. Sec. 711. If the language of the Constitution is wide enough to authorize the purchase of land for a post office and court-house and the acceptance of a grant of jurisdiction, there is no reason for taking the language of the statute in any narrower sense. *The*

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argument, although ostensibly directed against the statute, must embrace the Constitution, and, as we have implied, such an argument comes many years too late." (Emphasis ours).

We consider this case a conclusive example that laws of congress under Art. I, Sec. 8, Cl. 17, are *laws of the United States* and *as such* affect the jurisdiction of inferior courts throughout the United States. Under Art. I, Sec. 8, Cl. 17, congress has power to exercise exclusive legislation in all cases whatsoever over not only the District of Columbia but over forts, arsenals and other needful buildings. In pursuance of this power, congress has enacted statutes providing for punishment of crimes committed in these areas. These are not local laws, these are laws of the United States. They are laws of the United States in two senses: first, they create offenses against not the local government but against the United States as a national government, which are prosecuted as such; second, they affect and impose burdens upon citizens of the United States resident in the area or anyone in the area, and such offenses are prosecuted in federal courts *outside such area* where no courts have been set up for the area. Therefore, congress has provided by statute that such crimes may be punished through criminal proceedings brought not in a local court in the fort or arsenal, but in the United States District courts in the district and state where the fort or arsenal is located. In other words, a statute of congress under Art. I, Sec. 8, Cl. 17, making certain acts committed in forts and arsenals of the United States crimes and punishable by criminal proceedings in *any* of the United States District courts, *thus affecting the jurisdiction of the Federal courts of the entire country.* This is not contrary to but consistent with Art. III, Sec. 2 because congressional statutes under Art. I,

Sec. 8, Cl. 17 are "laws of the United States" within the meaning of that phrase as found in Art. III, Sec. 2.

Since congress has power under Art. I, Sec. 8, Cl. 17 to vest the federal courts throughout the nation with jurisdiction to hear criminal cases brought against resident or occupants of federal areas, such as forts, arsenals, military reservations and the like for crimes committed therein, then Congress, we submit, has power to vest in such courts jurisdiction of civil suits by or against residents of such areas, including the District of Columbia, because in both cases such acts of congress are laws of the United States, within the meaning of Art. III, Sec. 2.

The effect of the legislation of congress, respecting the District of Columbia, outside that geographical area may be considered in the light of the effect of judgments of courts of the District of Columbia in the several states. U. S. Const. Art. 4, Sec. 1 states:

> "Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceedings of every other State."

Congress extended its enactment under this provision to include the territories and the District of Columbia. In *Draper's Executors* v. *Gorman*, 35 Va. 628 (1837) the plaintiff sued in Virginia on a judgment secured in the District of Columbia. The court held the judgment was not entitled to full faith and credit, for although Congress had power to make state judgments binding within the District, it lacked power to give *extraterritorial* effect to judgments rendered *within* the District.

But the Supreme Court of the United States *held otherwise* in the case of *Embry* v. *Palmer*, 107 U. S. 3, 2 S. Ct. 25, 27 L. Ed. 346. In this case Embry obtained a judgment for $9,185 against Palmer in the Supreme

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Court of the District of Columbia, and sued upon it in the courts of Connecticut. Palmer sued in the Connecticut courts in equity to enjoin enforcement of the judgment, setting up a defense to part of the claim said to be unknown to him but known to the plaintiff at the time. Decree was entered on condition that Palmer pay Embry $2296, that Embry be restrained from further prosecuting the judgment. Embry appealed to the Supreme Court of Errors of Connecticut and that court sustained the trial court, whereupon Embry appealed to the United States Supreme Court. Embry contended that the decree was in contravention of Art. IV, Sec. 1 of Constitution of United States and Sec. 905, C. 17, Tit. 13, Rev. Stat. U. S., providing that the records and judicial proceedings of the courts of the states and of the United States shall have full faith and credit given to them in the courts of the several states.

Considered alone, and without reference to the other sections of the Constitution, the full faith and credit clause applies to the states only, and not to the District of Columbia or the territories. Thus, when Congress desired to effectuate this clause, the first act it passed provided that full faith and credit be given to the records, judicial proceedings and acts of the legislatures of the states. (1 Stat. 122 (1790), 28 U.S.C. 687 (1934)). It did not include the District of Columbia or the territories. But a later Act (2 Stat. 298 (1804), 28 U.S.C. 688 1934)) extended this provision to the territories and the District of Columbia. These two statutory provisions subsequently became Sections 905 and 906 of the Revised Statutes. While they appear as companionate acts created by the same power, the constitutional bases for the two provisions are not the same. The full faith and credit clause (Art. IV, Sec. 1) enabled the first section of the act, applying to the states, to be passed. But the

provision relating to the territories and the District of Columbia rests, for its constitutionality, on other clauses of the Constitution, Art. I, Sec. 8, Cl. 17 and 18.

The Supreme Court reversed the decree on the ground that the judgment of the District of Columbia court was binding on the courts of Connecticut. The court said (p. 9):

> "So far as this statutory provision relates to the effect to be given to the judicial proceedings of the States, it is founded on Art. 4, Sect. 1, of the Constitution, which, however, does not extend to the other cases covered by the statute. The power to prescribe what effect shall be given to the judicial proceedings of the courts of the United States is conferred by other provisions of the Constitution, such as those which declare the extent of the judicial power of the United States, which authorize all legislation necessary and proper for executing the powers vested by the Constitution in the government of the United States, or in any department or officer thereof, and which declare the supremacy of the authority of the national government within the limits of the Constitution. As part of its general authority, the power to give effect to the judgments of its courts is coextensive with its territorial jurisdiction. That the Supreme Court of the District of Columbia is a court of the United States, results from the right of exclusive legislation over the District which the Constitution has given to Congress. Accordingly, the judgments of the courts of the United States have invariably been recognized as upon the same footing, so far as concerns the obligation created by them, with domestic judgments of the States, wherever rendered and wherever sought to be enforced. * * *"

To the same effect is *Atchison, Topeka & Santa Fe Ry. Co.* v. *Sowers*, 213 U. S. 55, 29 S. Ct. 397, 53 L. Ed. 695, involving a judgment of a court of the territory of New Mexico.

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It was held that Congress, under its power to legislate for the territorities, was able to confer jurisdiction on the federal courts in various states where one of the litigants was a citizen or inhabitant of a territory. Such a case is *Southern Kansas Railway* v. *Briscoe,* 144 U. S. 133, 12 S. Ct. 538, 36 L. Ed. 377. This case arose under the Act of July 24, 1884, which provided that the United States courts "shall have jurisdiction over all controversies between the Southern Kansas Railway Company and the inhabitants of the nations or tribes, throughout whose territory such railway shall be constructed, without reference to the amount in controversy and without distinction as to the citizenship of the parties, so far as may be necessary to carry out the provisions of this Act." Briscoe, an inhabitant of the Chickshaw Nation, Indian Territory, sued the Railway Company to recover damages for the alleged wrongful killing of certain of his livestock by one of the defendant's trains. Suit was instituted in the District Court of the United States for the Western District of Arkansas. In holding that it was competent for Congress to give the enumerated courts jurisdiction, the court said (p. 136):

> "It is true that apart from the jurisdiction over the subject matter, a citizen of a territory cannot sue a citizen of a State in the courts of the United States, nor an Indian Tribe or nation sue a state or its citizens, but *the judicial power extends to all cases in law and equity arising under the laws of the United States, and this case falls within that category, and we hold that it is.*"

Upon the authority of this case we would like to observe that, in extending the jurisdiction of the United States District Court to cases involving citizens of the District of Columbia in the act now in question, under Art. I, Sec. 8, Cl. 17, and in determining within what scope the District Courts of the United States would

have jurisdiction to entertain cases by or again District of Columbia citizens, congress did, although it was not obliged to, impose the jurisdictional amount of $3,000 and diversity of citizenship as a condition of jurisdiction. Accordingly, it would be quite proper for congress to provide that citizens or creatures of the District of Columbia, or any other territory acquired under Art. I, Sec. 8, Cl. 17, might sue or be sued in any United States district court without regard to the amount involved and diversity of citizenship, the same not being *constitutional limitations* upon the jurisdiction of the district courts with respect to suits arising under the laws of the United States, but being instead *legislative limitations* imposed by congress in the case of suits by or against citizens or creatures of the District of Columbia.

Applying these principles to the instant case, although the defendant claims to have brought the case to the United States District Court by removal from the Illinois court purely on the ground of diversity of citizenship, the plaintiff has a right to the advantage of the jurisdiction of the United States District Court, resting upon a law of the United States here involved, enacted in connection with citizens of the District of Columbia. The jurisdiction of the United States District Court must be sustained upon any basis of which it is susceptible.

We feel, in the light of the above authorities, that the language of Justice Parker in his dissenting opinion in the case of *National Mutual Insurance Co.* v. *Tidewater Transfer Co.*, 165 F. 2d 531, at page 538, is worthy of careful consideration:

> "It is suggested that the power to create courts for citizens of the District is limited geographically

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to the District; but there is nothing in the Constitution from which any such limitations can be spelled out. It should be noted that the power of Congress is not merely to exercise exclusive legislation over the District, but also to make all laws necessary and proper to that end, which certainly would seem to authorize legislation necessary to secure a proper administration of justice for its citizens. See Art. 1, Sec. 8 (17) and (18). The power to legislate for the citizens of the District, as we have seen, is full legislative power, combining that possessed by Congress and a state legislature and, except for express limitations contained in the Constitution itself, analagous to the full power possessed by the Parliament of England. Certainly, if Congress is not limited by the territorial boundaries of the country in creating courts to provide a proper administration of justice for citizens resident or doing business in foreign countries, such as consular courts (*In re Ross*, 140 U. S. 453, 11 S. Ct. 897, 35 L. Ed. 581) or the United States Court for China (*Ex Parte Bakelite Corp.*, 279 U. S. 438, 451, 49 S. Ct. 411, 73 L. Ed. 789), there is no reason why it may not provide judicial facilities for citizens of the District of Columbia beyond the limits of the District, for the power to legislate for their protection in this regard is just as clearly given as the power to legislate for citizens of the country resident or trading abroad. That the protection is exercised in this rather than in a foreign country would seem to support rather than to negative the right to exercise it."

Another approach to the problem lies in considering a rule of construction, applicable alike to private contract, statute or constitution, requiring that if there be any problem of construction of two parallel provisions, one general and one specific, the specific shall control. The specific constitutional provision here involved gives Congress all inclusive power of legislation over the District of Columbia and its citizens. In *Lockerty* v. *Phillips*, 319

U. S. 182, 63 S. Ct. 1019, 87 L. Ed. 1339, the court observes (p. 187):

> "All federal courts, other than the Supreme Court, derive their jurisdiction wholly from the exercise of the authority to" ordain and establish inferior courts, conferred on Congress by Art. III, Sec. 1, of the Constitution. • • • The Congressional power to ordain and establish inferior courts includes the power "of investing them with jurisdiction either limited, concurrent or exclusive, and of withholding jurisdiction from them in the exact degree and character which to Congress may seem proper for the public good."

As was said in *United States* v. *Classic,* 313 U. S. 299, 61 S. Ct. 1031, 85 L.Ed. 1368:

> "Words of a constitution are not to be read with stultifying narrowness."

A broad yet wholly reasonable construction of the judiciary provisions of the constitution, relating to the judicial power extending to cases arising under the constitution and laws of the United States, obviates any supposed uncertainty and provides a ready solution to the problem of giving reasonable scope and proper effect to the powers of congress to afford courts of justice anywhere in the United States to those peculiar charges among its citizens, those resident or domiciled in the District of Columbia.

It would seem inappropriate to restrict the powers of Congress derived from Art. I, Sec. 8, Cl. 17, by reference to the diversity clause of Art. III, Sec. 2, ignoring the first clause of Art. III, Sec. 2, and thus destroy part of the obvious purpose of the congressional powers in relation to citizens of the District of Columbia. As was said in *Billings* v. *United States,* 232 U. S. 261, 282, 34 S. Ct. 421, 58 L. Ed. 596:

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> "It is also settled beyond dispute that the Constitution is not self-destructive. In other words, that the powers which it confers on the one hand it does not immediately take away on the other."

And in *Dick* v. *United States*, 208 U. S. 340, 28 S. Ct. 399, 52 L. Ed. 520:

> "Fundamental constitutional principles are of equal dignity and none must be so enforced as to nullify or substantially impair the other."

Important in this connection also is the case of *Kansas* v. *Colorado*, 206 U. S. 46, 27 S. Ct. 655, 51 L. Ed. 956, where we read:

> "It is a definite declaration, a provision that the judicial power shall extend to—*that is, shall include*—the several matters particularly mentioned, leaving unrestricted the general grant of the entire judicial power. There may be, of course, limitations on the grant of power, *but if there are any they must be expressed*, for otherwise the general grant would vest in the courts all the judicial power which the new Nation was capable of exercising. • • •
>
> "Speaking generally, it may be observed that the judicial power of a nation extends to all controversies justiciable in their nature, the parties to which or the property involved in which may be reached by judicial process, and when the judicial power of the United States was vested in the Supreme and other courts all the judicial power which the nation was capable of exercising was vested in those tribunals, and unless there be some limitations expressed in the Constitution it must be held to embrace all controversies of a justiciable nature arising within the territorial limits of the Nation, *no matter who may be the parties thereto.*"

We submit, therefore, that it is as much within the power of Congress to vest United States courts with jurisdiction to hear cases involving District of Columbia citi-

zens under Art. I, Sec. 8, Cl. 17, as to vest such courts with jurisdiction to hear bankruptcy, patent or interstate commerce cases under Art. I, Sec. 8, Cl. 3, 4 and 8, since all these cases arise under the constitution and laws of the United States and *are federal questions* within the meaning of Art. III, Sec. 2.

2.

Art. I, Sec. 8, Cl. 17 vests in Congress power "to exercise exclusive legislation in all cases whatsoever over such district * * * as may * * * become the seat of the government of the United States. * * * "

A. Congress in enacting legislation affecting the District of Columbia or its citizens,

(a) Acts not as a local legislature, but in its one high character as a national legislature;

(b) Creates, not local laws, but laws of the United States, which under Art. VI, Cl. 2 are the supreme law of the land;

(c) Creates laws binding the nation, like acts made in pursuance of other powers, and possessing obligation out of the ten miles square of the District of Columbia;

(d) Exercises power, including not only the powers that belong to Congress in respect of territory within a state, but also the powers of the state as well, a delegation which embraces full and unlimited jurisdiction, subject only to the prohibitions of the Constitution, to provide for the general welfare of citizens of the United States resident within the District of Columbia by any and every act of legislation which Congress may deem conducive to that end.

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What is the character in which Congress acts and what are the scope of its powers in exercising exclusive legislation in all cases whatsoever over the District of Columbia? We have referred to the case of *Cohens* v. *Virginia*, 19 U. S. (6 Wheat.) 264, 5 L. Ed. 257, where Chief Justice Marshall wrote:

> "*In the enumeration of the powers of congress, which is made in the eighth section of the first article*, we find that of exercising exclusive legislation over such district shall become the seat of government. This power, like all others which are specified, is conferred on congress *as the legislature of the Union;* For, strip them of that character, and they would not possess it. *In no other character can it be exercised.* In legislating for the district, they necessarily preserve the character of the legislature of the Union; for, *it is in that character alone that the constitution confers on them this power of exclusive legislation.* This proposition need not be enforced.
>
> "The second clause of the sixth article declares, that 'this constitution, and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land.'
>
> "*The clause which gives exclusive jurisdiction is, unquestionably, a part of the constitution, and, as such, binds all the United States.* Those who contend that acts of congress, made in pursuance of this power, do not like acts made in pursuance of other powers, bind the nation, ought to show some safe and clear rule which shall support this construction, and prove that an act of congress, clothed in all the forms which attend other legislative acts, and passed in virtue of a power conferred on, and exercised by congress, as the legislature of the Union, is not a law of the United States and does not bind them.
>
> "One of the gentlemen sought to illustrate his proposition that congress, when legislating for the district, assumed a distinct character, and was reduced to a mere local legislature, *whose laws could*

possess no obligation out of the ten miles square, by a reference to the complex character of this court. • • •

"Since congress legislates in the same forms, and in the same character, in virtue of powers of equal obligation, conferred in the same instrument, when exercising its exclusive powers of legislation, as well as when exercising those which are limited, we must inquire whether there be any thing in the nature of this exclusive legislation, which necessarily confines the operation of the laws made in virtue of this power to the place with a view to which they are made. • • •

"The solution, and the only solution of the difficulty, is, that the power vested in congress, as the legislature of the United States, to legislate exclusively within any place ceded by a state, carries with it, as an incident, the right to make that power effectual. If a felon escapes out of the state in which the act has been committed, the government cannot pursue him into another state, and apprehend him there, but must demand him from the executive power of that other state. If congress were to be considered merely as the local legislature for the fort or other place in which the offence might be committed, then this principle would apply to them as to other local legislatures, and the felon who should escape out of the fort, or other place, in which the felony may have been committed, could not be apprehended by the marshal, but must be demanded from the executive of the state. But we know that the principle does not apply; and the reason is, *that congress is not a local legislature, but exercises this particular power, like all its other powers, in its high character, as the legislature of the Union.* The American people thought it a necessary power, and they conferred it for their own benefit. *Being so conferred, it carries with it all those incidental powers which are necessary to its complete and effectual* execution." (Emphasis ours.)

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We have seen that the jurisdiction of federal courts other than the courts of the District of Columbia, in the *Cohens* case, the Supreme Court, and in the *Battle* case, the District Court of the United States for Georgia, were extended to cases arising under laws enacted by congress relating to the District of Columbia, as laws not of a local but as a national legislature whose binding effect reaches to all parts of the United States. So that the position of the lower court that congress may not affect the jurisdiction of the United States courts outside of the District of Columbia by *laws of the United States* relating to the District finds no support in the decisions of the Supreme Court.

We wish to refer to the case of *Kendall* v. *United States*, 37 U. S. (12 Pet.) 524, 9 L. Ed. 1181, where the court says on page 618:

> "But let us examine the act of congress of the 27th of February, 1801, concerning the district of Columbia, and by which the circuit court is organized, and its powers and jurisdiction pointed out. And it is proper, preliminary, to remark, that under the constitution of the United States, and the cessions made by the states of Virginia and Maryland, the exercise of exclusive legislation, in all cases whatsoever, is given to congress. And it is a sound principle, that in every well-organized government, the judicial power should be co-extensive with the legislative, so far, at least, as private rights are to be enforced by judicial proceedings. There is, in this district, no division of powers between the general and state governments. Congress has the entire control over the district, for every purpose of government; * * *."

In *Pollard* v. *Hagan*, 44 U. S. (3 How.) 212, 233, 11 L. Ed. 565, the court said:

> "By the 16th clause of the 8th section of the 1st article of the Constitution, power is given to Congress 'to exercise exclusive legislation in all cases

whatsoever, over such district (not exceeding ten miles square) as may by cession of particular states, and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the legislature of the state in which the same may be, for the erection of forts, magazines, arsenals, dock-yards, and other needful buildings.' Within the District of Columbia, and the other places purchased and used for the purposes above mentioned, *the national and municipal powers of government, of every description, are united in the government of the Union.* And these are the only cases, within the United States, in which all the powers of government are united in a single government, except in the cases already mentioned of the temporary territorial governments, and there a local government exists. * * *"

In *Keller* v. *Potomac Electric Power Co.*, 261 U. S. 428, 43 S. Ct. 445, 67 L. Ed. 731, the court said (p. 442):

"By the Constitution, Clause 17, Sec. 8, Article I, Congress is given power 'To exercise exclusive legislation in all cases whatsoever, over' the District of Columbia. This means that as to the District Congress possesses not only the power which belongs to it in respect of territory within a state but the power of the state as well."

To like effect in *Stoutenburgh* v. *Hennick*, 129 U. S. 141, 147, 9 S. Ct. 256, 257, 32 L. Ed. 637, the court said:

"Over this district congress possesses 'the combined powers of a general and of a state government in all cases where legislation is possible.'"

Likewise in *Capitol Traction Co.* v. *Hof*, 174 U. S. 1, 5, 19 S. Ct. 580, 43 L. Ed. 873, the court said:

"The Congress of the United States, being empowered by the Constitution 'to exercise exclusive legislation in all cases whatsoever' over the seat of the national government, has the entire control over the

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District of Columbia *for every purpose of government, national or local.* It may exercise within the district all legislative powers that the legislature of a state might exercise within the state; and may vest and distribute the judicial authority in and among the courts and magistrates, and regulate judicial proceedings before them, as it may think fit, so long as it does not contravene any provision of the Constitution of the United States." (Emphasis ours.)

On the authority of these, and other cases, quoted in ample notes, the Circuit Court of Appeals for the District of Columbia wrote in its opinion in *Neild* v. *District of Columbia,* 110 F. 2d 246 at page 249, referring to Art. I, Sec. 8, Cl. 17:

"That delegation is sweeping and inclusive in character, to the end that Congress may legislate within the District for every proper purpose of Government. Within the District of Columbia, there is no division of legislative powers such as exists between the federal and state governments. Instead there is a consolidation thereof, which includes within its breadth all proper powers of legislation. Subject only to those prohibitions of the Constitution which act directly or by implication upon the federal government, Congress possesses full and unlimited jurisdiction to provide for the general welfare of citizens within the District of Columbia by any and every act of legislation which it may deem conducive to that end. In fact, when it legislates for the District, Congress acts as a legislature of national character, exercising complete legislative control as contrasted with the limited power of a state legislature, on the one hand, and as contrasted with the limited sovereignty which Congress exercises within the boundaries of the states, on the other. * * *"

See also to this effect, *Kerr* v. *Ross,* 5 App. D. C. 241, 247; *Lansburgh* v. *District of Columbia,* 11 App. D. C. 512, 521; *Moses* v. *United States,* 16 App. D. C. 428, 433;

Curry v. *District of Columbia*, 14 App. D. C. 423, 438; *Gudmundson* v. *Cardillo*, 126 F. 2d 521, 525.

3.

Congress in exercising unlimited sovereign and exclusive powers under Art. I, Sec. 8, Cl. 17, in relation to the citizens of the United States resident in the District of Columbia, in order to provide them those privileges and immunities and to impose upon them those obligations essential to an ordered society of free people, has the function among other things to establish courts of justice with jurisdiction to entertain actions in law or in equity by or against citizens of the United States, residents of the District of Columbia.

A. In exercising this power of providing for the enforcement of private or civil rights of citizens of the United States resident in the District of Columbia by judicial proceeding in courts of the United States, Congress is acting not as a local but as a constitutional national legislature.

B. Congress is not limited in exercising such national sovereign powers, in relation to the citizens of the District of Columbia to vesting solely courts of the District of Columbia with jurisdiction of causes brought by or against such citizens, but may vest all the courts of the United States with such jurisdiction.

C. Congress, as the only sovereign power over citizens of the District of Columbia under Art. I, Sec. 8, Cl. 17, in passing laws respecting their rights and obligations, has discretion, under Art. I, Sec. 8, Cl. 18, in protecting such rights and enforcing such obligations, to vest courts of the United States with such jurisdiction of civil cases

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brought by or against and criminal cases against citizens of the District of Columbia, as Congress deems most eligible and best adapted to attain the object.

Such power of exclusive legislation comprehends not alone the territory of the District of Columbia but the people residing therein as was observed in *Shoemaker* v. *United States*, 147 U. S. 282, 13 S. Ct. 361, 37 L. Ed. 170, where the court quoted the language of the Maryland Act of cession as follows (p. 300):

> "• • • 'That all that part of said territory called Columbia, which lies within the limits of this State, shall be and the same is hereby, acknowledged to be forever ceded and relinquished to the Congress and government of the United States, in full and absolute right and exclusive jurisdiction, *as well of soil as of persons residing or to reside thereon,* pursuant to tenor and effect of the eighth section of the first article of the Constitution of government of the United States.' *Mattingly* v. *District of Columbia*, 97 U. S. 687, 690; *Gibbons* v. *District of Columbia*, 116 U. S. 404.
>
> "Proceedings upon the conclusion that the United States possesses full and unlimited jurisdiction, *both of a political and municipal nature,* over the District of Columbia, we come to a consideration of certain objections, taken in the court below and urged here, to the validity of the statute itself and to the proceedings under it." (Emphasis ours.)

The nature of the powers which inhere in a sovereign state in relation to its people, which powers are vested by the constitution in the Congress affecting the residents of the District of Columbia, we may find referred to in *New York* v. *Miln*, 71 Pet. 102, 9 L. Ed. 648, where the court said (p. 139):

> "• • • That a state has the same undeniable and unlimited jurisdiction over all persons and things, within its territorial limits, as any foreign nation;

where that jurisdiction is not surrendered or restrained by the constitution of the United States. That, by virtue of this, it is not only the right, but the bounden and solemn duty of a state, to advance the safety, happiness and prosperity of its people, and to provide for its general welfare, by any and every act of legislation, which it may deem to be conducive to these ends; where the power over the particular subject, or the manner of its exercise is not surrendered or restrained, in the manner just stated. * * *"

This language as quoted with approval in *Nebbia* v. *New York,* 291 U. S. 502, 523, 54 S. Ct. 505, 78 L. Ed. 940.

In considering what privileges and immunities are in their nature fundamental, in the enjoyment of which the several state governments have in the exercise of their sovereignty undertaken to protect their citizens, and in the enjoyment of which Congress has been vested with power under Art. I, Sec. 8, Cl. 17, to protect the citizens of the United States resident in the District of Columbia, we would like to refer to the case of *Corfield* v. *Coryell,* (C.C. Pa. 1823), 4 Wash. C. C. 371, Fed. Case No. 3,230, approved in *Slaughter-House Cases,* 16 Wall. 36, 75, 97, 21 L. Ed. 394, where the court writes in its opinion:

"The term is to be confined to those privileges and immunities of citizens which are in their nature fundamental, which belong of right to the citizens of all free governments, and which have at all times been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign. They may all be comprehended under the following general heads: protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a

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citizen of one state to pass through or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise; to claim the benefit of the writ of habeas corpus; *to institute and maintain actions of any kind in the courts of the state;* * * *."*

It becomes apparent, upon the above authorities, that Congress is not restricted in its power to protect the privileges and immunities of the citizens of the District of Columbia, except by those limitations of the constitution guaranteeing certain fundamental rights and privileges. When enacting legislation affecting the privileges and immunities of the citizens of the United States in the District of Columbia, Congress acts not as the local legislature of the district, but as a legislature of national character combining the powers of both federal and state governments.

If when enacting legislation as to the privileges and immunities of the citizens of the United States resident in the District of Columbia, the congress were acting only as a *local legislature,* and not as a national legislture, then it might be said that such citizens could exercise and enjoy such privileges and immunities only while within the territorial boundaries of the District of Columbia and not elsewhere. But since the congress is legislating as to the privileges and immunities of the citizens of the United States resident in the District of Columbia, acts in its *national character* with state and federal powers combined, congress may provide by law for the granting and protection of the privileges and immunities of such citizens wherever they may be within the nation, to the extent of the national powers under the constitution.

When reading Art. I, Sec. 8, Cl. 17, providing that congress shall have power

"To exercise exclusive legislation in all cases whatsoever over such district * * *"

not only the territory or geographical boundaries of the district were concerned, but the people resident in the district were concerned. The congress was invested with respect to the district with all the powers of the states *over* their several geographical areas *and over the people* within their boundaries, as well as with all federal powers under the constitution. These include the power to provide for the protection of those privileges and immunities which are in their nature fundamental, which belong of right to the citizens of all free governments and which have at all times been enjoyed by the citizens of the United States from the time of their becoming free, independent and sovereign, including the right to institute and maintain actions of any kind in the courts of the United States. Such is the meaning of the words "in all cases whatsoever".

The amendment in question to the Judicial Code, granting such a fundamental right, is a law of the United States, not because Congress enacted it but because Congress *validly enacted it* under the provisions of Cl. 17 and 18 of Sec. 8, Art. I. These provisions delegated to and invested in the United States government as complete, unlimited sovereignty, executive, legislative and judicial, over matters involving its citizens residing in the District of Columbia as the several states have over their respective citizens. Among the powers thus given to Congress is the power to establish a judicial forum for litigation involving the citizens of the District of Columbia. The provision of such a forum is an inherent function of the sovereign. Legislation providing the forum is a law of the sovereign. The sovereign as to the District of Columbia is the United States, not the District of Columbia. (*Metropolitan R. Co.* v. *District of Columbia,* 132 U. S. 1, 9, 10 S. Ct. 19, 33 L. Ed. 231). Laws

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passed by Congress relating to the District of Columbia, including laws providing a forum for its citizens are laws of the United States and not of the District of Columbia. (See *Battle* v. *United States,* above cited.) Because a law enacted by Congress providing such forum is a law of the United States, the forum so selected or established may be any United States District Court, under Art. III of the constitution. A state of the union may not provide a forum outside its limits because it has absolutely no jurisdiction outside its territorial limits. But the federal territorial limits embrace the entire nation as to powers delegated to it, limited with respect to the citizens of the State, but unlimited as to the citizens of the District of Columbia. Thus the judicial powers of the United States are territorially co-extensive with the national boundaries.

It is one of the inherent powers of government and a recognized attribute of sovereignty, that a government may create courts and may grant access of its citizens to its courts to seek justice according to law. An examination of the constitutions of the several states will disclose the recognition of the power of the states to grant to their citizens access to their courts for the protection of their rights and liberties. Since the Congress in legislation dealing with the rights, privileges and immunities of the citizens of the United States in the District of Columbia, who while citizens of the United States are not citizens of any state, is acting as a legislature of the Union with combined powers of the federal and state governments, it would seem reasonable and necessary to conclude that Congress has power under Art. I, Sec. 8, Cl. 17 and 18, to grant to the citizens of the United States in the District of Columbia access to the courts of the United States wherever located.

The effect of the decision of the *Cohens* and *Battle* cases are that the *judicial functions* of the federal government *may be exercised* when authorized by congress *within the national boundaries* for the protection of the privileges and immunities of citizens of the United States resident in the District of Columbia. We do not at all mean that congress may grant to United States citizens resident in the District of Columbia privileges and immunities which may be exercised in the states contrary to state laws, but only that such privileges and immunities as such citizens may have under the federal constitution and laws of the United States, and such as may be granted by the states, may be protected when authorized by Congress, as for instance, by maintaining suits and appeals in the courts of the United States established by Congress within the nation in pursuance of Art. III of the Constitution. What sort of sovereignty would it be that lacked power to grant its citizens access to its courts for the enforcement of such rights?

In support of this proposition we refer also to the case of *O'Donoghue* v. *United States*, 289 U. S. 516, 53 S. Ct. 740, 77 L. Ed. 1356, where it was held that Supreme Court and of the Court of Appeals of the District of Columbia are of equal rank and power with those of the other inferior courts of the federal system and derived judicial power from Art. III of the Constitution, and though created by Congress under the authority of Art. I, Sec. 3, Cl. 17, their judges were nevertheless entitled to the protection of Art. III, Sec. 1, prohibiting diminution of the salary of judges during their continuance in office. On page 538 the court says:

> "• • • The pertinent clause of the Constitution (Art. I, Sec. 8, Cl. 17) confers the power on Congress to 'exercise exclusive legislation • • • over such district • • • as may • • • become the seat of govern-

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ment of the United States.' These are words of permanent governmental power. The District, as the seat of the national government, is as lasting as the States from which it was carved or the union whose permanent capital it became. It could not have been intended otherwise; and it was thus recognized by the act of acceptance in 1790 (Sec. 1, c. 28, 1 Stat. 130): '* * * the (District) is hereby accepted for the permanent seat of the government of the United States.' "

And on pages 539-540:

"Over this District Congress possesses 'the combined powers of a general and of a state government in all cases where legislation is possible.' *Stoutenburgh* v. *Hennick*, 129 U. S. 141, 147. The power conferred by Art. I, Sec. 8, Cl. 17, is plenary; but it does not exclude, in respect of the District, the exercise by Congress of other appropriate power conferred upon that body by the Constitution, or *authorize a denial to the inhabitants of any constitutional guaranty not plainly inapplicable.* Circuit Judge Taft, afterwards Chief Justice of this court, speaking for himself, Judge Lurton, afterwards an associate justice of this court, and Justice Hammond, in *Grether* v. *Wright*, 75 F. 742, 756-757, after reciting the foregoing clause and the organization of the District under it, said:

" 'It was meet that so powerful a sovereignty should have a local habitation the character of which it might absolutely control, and the government of which it should not share with the states in whose territory it exercised but a limited sovereignty, supreme, it is true, in cases where it could be exercised at all, but much restricted in the field of its operation. The object of the grant of exclusive legislation over the district was, therefore, national in the highest sense, and the city organized under the grant became the city, not of a state, not of a district, but of a nation. In the same article which granted the powers of exclusive legislation over its seat of government, are con-

ferred all the other great powers which make the nation, including the power to borrow money on the credit of the United States. He would be a strict constructionist, indeed, who should deny to congress the exercise of this latter power in furtherance of that of organizing and maintaining a proper local government at the seat of government. Each is for a national purpose, and the one may be used in aid of the other.'

"*Callan* v. *Wilson*, 127 U. S. 540, 550 (8 S. Ct. 1301, 32 L. Ed. 223).

" 'There is nothing in the history of the Constitution or of the original amendments to justify the assertion that the people of this District may be lawfully deprived of the benefit of any of the constitutional guarantees of life, liberty, and property—especially of the privilege of trial by jury in criminal cases.'

"It is important to bear constantly in mind that the District was made up of portions of two of the original states of the Union, and was not taken out of the Union by the cession. Prior thereto its inhabitants were entitled to all the rights, guaranties and immunities of the Constitution, among which was the right to have their cases arising under the Constitution heard and determined by federal courts created under, and vested with the judicial power conferred by, Art. III. We think it is not reasonable to assume that the cession stripped them of their rights, and that it was intended that at the very seat of the national government the people should be less fortified by the guaranty of an independent judiciary than in other parts of the Union."

While citizens of the District of Columbia are not citizens of a state of the United States and cannot rely upon the laws of any state or upon those provisions of the United States Constitution relating specifically to the rights, privileges and immunities of the citizens of a state *Haavik* v. *Alaska Packers Assn.*, 263 U. S. 510, 44 S. Ct.

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177, 68 L. Ed. 414), nevertheless Congress has full and adequate power under Art. I, Sec. 8, Cl. 17-18 to provide for and protect the rights, privileges and immunities of the citizens of the United States resident in the District of Columbia as fully as citizens of the several states of the Union are protected.

The court below in its majority opinion looks upon *O'Donoghue* v. *United States,* 289 U. S. 516, above cited, as supporting the view that Congress cannot grant United States District Courts jurisdiction of cases by or against citizens of the District of Columbia. In that case it was recognized that Congress, by reason of its unlimited constitutional power over the District of Columbia, could grant to the courts of the District of Columbia administrative power beyond the judicial power which it could grant to United States courts elsewhere. We cannot believe that this negates but to the contrary we believe that it supports the converse, that is to say, that Congress has power, by the same unlimited constitutional grant of exclusive legislation over citizens of the District of Columbia, to afford them access and make them subject to the jurisdiction of United States courts everywhere, because such is a grant of judicial not administrative power. In this case the Supreme Court held that Congress had the power and duty under Art. I, Sec. 8, Cl. 17 to protect the citizens of the District of Columbia in every constitutional guaranty including the guaranty of Art. III of an independent judiciary. In other words, the court in the *O'Donoghue* case held that the law providing for the reduction of salaries of District of Columbia judges was a *law of the United States* and therefore affected by the *constitutional guarantee* of Art. IIII against such reduction. If laws establishing courts for the District of Columbia or affecting the salaries of their judges are *laws of the United States,* then a law giving jurisdiction to federal

district courts with respect to the suits by or against citizens of the District of Columbia *is a law of the United States*. For that principle the *O'Donoghue* case is cited by the plaintiff.

The burden of the court's argument in that case was the uninhibited and exclusive powers of Congress to protect the rights and privileges of the citizens of the District of Columbia, not a fear of the limitations of judicial power. The court was not at all concerned with applying technical rules of construction to impair federal jurisdiction but with the living and enduring questions of protecting the rights and privileges of its citizens in the District of Columbia. Since the inhabitants of the District of Columbia could prior to cession to the United States have resorted to United States courts as state citizens in diversity cases, the Constitution, then, by the authority of the *O'Donoghue* and *Callen* cases, was not designed to take away such rights by cession but to transfer power to Congress to protect such rights as part of the congressional power to pass *laws of the United States* within the meaning of Art. III, Sec. 2. Why should there be resistance to affording a judicial forum to District of Columbia citizens in United States courts when it is so plainly supported by reason and authority and when Art. III, Sec. 2, clearly provides the basis for such jurisdiction when it uses the phrase "laws of the United States"? Why deny Congress powers necessary to protect and govern those citizens who are its peculiar and exclusive charge?

The District Courts of the United States are courts of the national government of the United States Courts of the District of Columbia are also courts of the national government of the United States. (*Embry* v. *Palmer*, 107 U. S. 3, 9, 10, 27 L. Ed. 346, 348, 349, 2 S. Ct. Rep.

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25; *Phillips* v. *Negley*, 117 U. S. 665, 674, 675, 29 L. Ed. 1013, 1015, 6 S. Ct. 901; *Moss* v. *United States*, 23 App. D. C. 475, 481-3). Since Congress has power to grant to citizens of the United States in the District of Columbia access to courts of the United States in the District of Columbia, it can properly be said, we submit, that power is vested in Congress under Art. I, Sec. 8, Cl. 17 to grant to such citizens in the District of Columbia access to other courts of the United States.

Since no distinction is made between the courts of the District of Columbia established by Congress under Article I, Sec. 8, Cl. 17, and the inferior courts established by Congress under Art. III, Sec. 1 of the Constitution, as being courts of the United States, it is untenable to make a distinction in the powers of Congress to grant its citizens of the United States in the District of Columbia access to the courts of the United States in the District of Columbia on the one hand, and the powers of Congress to grant to citizens of the United States resident of the District of Columbia access to other courts of the United States other than those of the District of Columbia, on the other.

It is to be noted that under Art. III, Sec. 1, "the judicial power of the United States shall be vested in one supreme court and in such inferior courts as the congress may from time to time ordain and establish." It has been held that the inferior courts referred to in Art. III, Sec. 1, no less include the courts of the District of Columbia than other courts of the United States. (*Embry* v. *Palmer*, 107 U. S. 3, 9, 10, 27 L. Ed. 346, 348, 349, 2 S. Ct. Rep. 25; *Phillips* v. *Negley*, 117 U. S. 665, 674, 29 L. Ed. 1013, 1015, 6 S. Ct. 901; *Moss* v. *United States*, 23 App. D. C. 474, 481).

When Art. III, Sec. 2 provides in part:

> "The judicial power shall extend to all cases in law and in equity arising under this constitution, the laws of the United States * * *"

and when Congress is empowered by Art. I, Sec. 8, Cl. 17 of the Constitution to legislate in all cases affecting the rights and interests of citizens of the United States in the District of Columbia, such legislation so founded constitutes "laws of the United States." By analogy, therefore, Congress has constitutional authority to extend the judicial power of the United States to all cases in law and in equity brought by citizens of the United States of the District of Columbia in the courts of the United States wherever located.

Stated in another way, if the judicial power of the United States extends under Art. III, Sec. 2 to all cases in law and in equity arising under the Constitution and the *laws of the United States,* then since Art. I, Sec. 8, Cl. 17, grants to the Congress the power of determining the rights, privileges and immunities of the citizens of the District of Columbia and to pass laws granting and protecting such rights, the judicial power of the United States extends, when provided by Congress, to the granting to the courts of the United States wherever located of jurisdiction of suits brought by citizens of the District of Columbia.

The Constitution of the United States defines some but does not pretend to state what all the rights, privileges and immunities of the citizens of the District of Columbia are, nor what the rights of the citizens of any state are. In the case of citizens of the states, such other rights, privileges and immunities are determined by the constitutions and laws of the several states, subject to the limitations imposed upon them by the federal constitution. In

case of citizens of the United States resident in the District of Columbia, they are to be determined by Congress, except for the limitations imposed by the federal constitution.

The citizens of the United States resident in the District of Columbia cannot look to any state as being the sovereign upon whom they depend for protection and the exercise of those powers of government which are indispensable to a free people. (*Hooe* v. *Jamieson*, 166 U. S. 395, 17 S. Ct. 596, 41 L. Ed. 1049; *Barney* v. *City of Baltimore*, 73 U. S. (6 Wall.) 280, 18 L. Ed. 825; *Hepburn* v. *Ellzey*, 6 U. S. (2 Cranch.) 445, 2 L. Ed. 332.) They are not the beneficiaries of the state governmental powers except in a negative sense, as the federal Constitution by Amendment XIV prohibits a state from denying to any citizen of the United States due process and the equal protection of its laws. The only sovereign to which a District of Columbia resident may look under Art. I, Sec. 8, Cl. 17, is the United States government and its legislative and judicial processes.

It may be observed that the United States constitution for valid reasons has not left the Congress without power to grant diversity jurisdiction to the federal courts and Congress has not left the citizen of one state only the courts of another state in which to have adjudicated his rights as against the citizens of the other state. It may consistently be observed that the United States constitution has for the same valid reasons vested Congress with the widest and most comprehensive powers in legislating in its national character for the well-being and the privileges and immunities of this unique group of its citizens resident in the District of Columbia, powers of the state and federal governments combined.

It is perfectly reasonable and proper for Congress, in legislating in its national character for the only sovereignty to which a District of Columbia resident is directly subject, to vest its courts wherever located in the United States with jurisdiction to entertain cases between citizens of the United States resident in the District of Columbia and citizens of the several states. In what sense can this be said to be a strain upon our accepted doctrines as to the sovereign powers of a state over its citizens? Quite to the contrary, a sovereign nation acting in its national character, or a sovereign state of the union acting under the high powers of statehood, has as one of its indispensable attributes the establishment of courts of justice in which its citizens may maintain causes for the protection and enforcement of their rights. Would not the proponent of the theory that a sovereign acting in its high capacity, as combining state and federal powers under our constitutional system, is without power to grant to this peculiar and particular group of United States citizens of the District of Columbia access to its national courts wherever Congress has power to establish them, have a most overwhelming if not impossible burden of argument?

In this same connection we should like to call to the attention of the court that among that group of powers which Art. III, Sec. 2 encompasses when it provides that judicial power extends to cases arising under "laws of the United States", are also the following powers granted to Congress in Art. I, Sec. 8:

> "To constitute tribunals inferior to the supreme Court." (Cl. 9)
>
> "To make all laws which shall be necessary and proper for *carrying into execution the foregoing powers*, and *all other powers* vested by this consti-

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tution in the government of the United States, or any *department* or officer thereof." (Cl. 18) (Emphasis ours.)

In the face of grants so broad, it is plain, is it not, that Congress has power in its discretion to enact laws necessary to implement not only the powers described in Art. I, Sec. 8, Cl. 17, to protect the rights and impose obligations upon District of Columbia citizens, but to carry such authority into effect also by passing laws to *implement the powers of the judicial department of the government* to deal with and protect the rights and privileges of the citizens of the District of Columbia over which the United States of America is the only sovereign power. These are great powers that the people and the states of the United States entrusted to the national government. Why should they be whittled away for questionable and unprecedented technical reasons?

It is in the power of Congress to adopt the means in its discretion most eligible and best adapted to give effect to its constitutional prerogatives. The plaintiff submits that this court cannot reasonably hold that granting to citizens of the United States resident in the District of Columbia access to United States courts and granting to United States courts jurisdiction to hear suits by and against citizens of the United States resident in the District of Columbia, lies outside of the discretion of Congress to choose those means most eligible and best adapted to exercise those great powers of exclusive legislation in all cases whatsoever conferred upon Congress by Art. I, Sec. 8, Cl. 17 of the Constitution. In *Logan* v. *United States,* 144 U. S. 263, 12 S. Ct. 617, 36 L. Ed. 429, the court observes (p. 283):

"Among the powers which the Constitution expressly confers upon Congress is the power to make all laws necessary and proper for carrying into execution the powers specifically granted to it, and all

other powers vested by the Constitution in the government of the United States, or *in any department* or officer thereof. In the exercise of this general power of legislation, Congress may use any means, appearing to it most eligible and appropriate, which are adapted to the end to be accomplished, and are consistent with the letter and the spirit of the Constitution. *McCulloch* v. *Maryland*, 4 Wheat. 316, 421; *Julliard* v. *Greenman*, 110 U. S. 421, 440, 441. (p. 293)

"* * * that every right, created by, arising under or dependent upon, the Constitution of the United States, may be protected and enforced by Congress by such means and in such manner as Congress, in the exercise of the correlative duty of protection, or of the legislative powers conferred upon it by the Constitution, may in its discretion deem most eligible and best adapted to attain the object." (Emphasis ours.)

4.

A. The grant of judicial power in Art. III, Sec. 2, in cases arising under "the constitution, the laws of the United States" is independent of and is not limited by the later grant in cases involving "controversies * * * between citizens of different states."

B. The constitutionality of the statute in question rests upon the grant of judicial power extending to cases arising under "the laws of the United States," and this is sufficient.

In order to arrive at the result reached by the lower court it would be necessary to construe that part of Art. III, Sec. 2 reading: "controversies * * * between citizens of different states" as a qualification or limitation upon the first sentence of Art. III, Sec. 2 reading:

"The judicial power shall extend to all cases, in law and equity, arising under this constitution, the laws of the United States, * * *"

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Such a construction is contrary to long established precedent and authority. In *Cohens* v. *Virginia*, 19 U. S. (6 Wheat.) 264, 5 L. Ed. 257, Chief Justice Marshall wrote (p. 378):

> "The second section of the third article of the constitution defines the extent of the judicial power of the United States. Jurisdiction is given to the courts of the Union in two classes of cases. In the first, their jurisdiction depends on the character of the cause, whoever may be the parties. This class comprehends all 'cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.' This clause extends the jurisdiction of the court to all the cases described, without making in its terms any exception whatever, and without any regard to the condition of the party. If there be an exception, it is to be implied against the express words of the article.
>
> "In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended 'controversies between two or more states, between a state and citizens of another state,' and 'between a state and foreign states, citizens or subjects.' If these be the parties, it is entirely unimportant what may be the subject of controversy. Be it what it may, these parties have a constitutional right to come into the courts of the Union."

In *The Moses Taylor*, 71 U. S. (4 Wall.) 411, 428, 18 L. Ed. 397, the court in part says:

> "In the opinion delivered in the case of *Martin* v. *Hunter*, Va. 1816, 1 Wheat., U. S. 334, 4 L. Ed. 97, Mr. Justice Story comments upon the fact that there are two classes of cases enumerated in the clause cited, between which a distinction is drawn; that the first class includes cases arising under the Constitution, laws, and treaties of the United States, cases affecting ambassadors, other public ministers,

> and consuls, and in case of admiralty and maritime jurisdiction; and that, with reference to this class, the expression is that the judicial power shall extend to all cases; but that in the subsequent part of the clause, which embraces all the other cases of national cognizance, and forms the second class, the word 'all' is dropped. And the learned justice appears to have thought the variation in the language the result of some determinate reason, and suggests that, with respect to the first class, it may have been the intention of the framers of the Constitution imperatively to extend the judicial power either in an original or appellate form to all cases, and with respect to the latter class, to leave it to Congress to qualify the jurisdiction in such manner as public policy might dictate. • • •"

In *Lincoln Gas & Eletric Light Co.* v. *City of Lincoln*, 250 U. S. 256, 39 S. Ct. 454, 63 L. Ed. 968, the court held that even without diversity of citizenship, if a suit in federal court presents a controversy under the constitution and laws of the United States, the jurisdiction extends to the determination of all questions, including questions of state law, and irrespective of the disposition made of the federal questions. See also *Pope* v. *Louisville N. A. & C. R. Co.*, 173 U. S. 573, 19 S. Ct. 500, 43 L. Ed. 814; *Chesbrough* v. *Woodworth*, 244 U. S. 72, 37 S. Ct. 579, 61 L. Ed. 1000; *Burbank* v. *Bigelow*, 92 U. S. 179, 23 L. Ed. 542.

The whole field of jurisdiction of United States courts in matters involving federal questions would be wiped out if the opinion of the lower court were sound. Cases involving patents, bankruptcy, or interstate commerce, for instance, are within the jurisdiction of United States courts, without diversity of citizenship being present; and such being the case, the diversity clause of Art. III, Sec. 2 is not a limitation on the powers of Congress to vest jurisdiction in United States courts of federal questions in pursuance to the first clause of Art. III, Sec. 2.

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5.

Aside from the above basis for the constitutionality of the amendment of 1940 to Sec. 24(1) of the Judicial Code, a citizen of the United States resident in the District of Columbia may properly be considered as one of the "citizens of different states" within the meaning and purpose of Art. III, Sec. 2 of the constitution of the United States, in the use of the words "between citizens of different states."

Counsel for the plaintiff and petitioner is of the opinion that the position hereinabove taken in Points 1 to 4 as to the constitutionality of the Amendment of 1940 to the Judicial Code is that most likely upon reflection to be judged consistent with the basic political philosophy of the framers of the constitution, with principles of constitutional construction and with reason and precedent.

Consistent with the high respect in which we and the profession generally hold the experience and scholarly attainments of Justice Evans of the Seventh Circuit and Justice Parker of the Fourth Circuit, and consistent with the practically unanimous expressions of the law review writers who have devoted careful study and thorough research to the subject, we feel, however, that it is sound to present also the position that, not in any way contradicting the argument previously made, the constitutionality of the amendment in question may still be upheld, even if we for the time being pay no attention to the first clause of Art. III, Sec. 2 of the constitution and, like many seem to have done, confine our attention to that portion of Art. III, Sec. 2 reading: "Controversies • • • between citizens of different states."

The difficulty here arises from the precedents established in the cases of *Hepburn* v. *Ellzey,* 6 U. S. (2

Cranch) 445, 2 L. Ed. 332; *Barney* v. *City of Baltimore*, 73 U. S. (6 Wall.) 280, 18 L. Ed. 825, and *Hooe* v. *Jamieson*, 166 U. S. 395, 17 S. Ct. 596, 41 L. Ed. 1049, construing previous acts of Congress granting diversity jurisdiction in controversies between "citizens of different states" and holding this phrase to mean only citizens of different states of the Union, as Virginia or California. Now, however, we have a different expression of Congress specifically including citizens of the District of Columbia, Hawaii, Alaska and the territories. This raises the question whether the courts are justified in clinging to the definition of the word "state" in one of its specific senses as meaning one of those states which are admitted to the Union as component parts of the United States of America, or whether the courts by the customary rules of construction are at liberty to consider the word "state" in its generic sense, "a body politic, occupying a definite territory and politically organized under one government." (Webster's Dictionary)

The federal government of the United States is the sovereign state of the United States, to the full extent of its constitutional powers. There are nevertheless bodies politic which are an integral part of the United States which possess certain inherent sovereign powers in and of themselves, only limited by the grant of powers to the federal government. It has been recognized that these bodies politic and political subdivisions of the United States occupy definite territories, are politically organized under their several governments, exercise a broad portion of the general field of sovereignty and are called states. No less is the District of Columbia, which is the seat of the government, a part of the United States, whose sole sovereign is the federal government of the United States, which extends to a definite terri-

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tory and is politically organized. It is a definite political subdivision of the United States, the rights of whose citizens as much depend upon the laws of their domicile as do the rights of the citizens of the states of the Union depend on theirs.

In *Faitoute Co.* v. *Asbury Park,* 316 U. S. 502; 62 S. Ct. 1129; 86 L. Ed. 1629, the court said:

> "The Constitution is 'intended to preserve practical and substantial rights, not to maintain theories.' • • • Particularly in a case like this are we in the realm of actualities and not of abstractions and paper rights. • • • The dividing line will remain obscure if we deal with empty abstract rights instead of wordly gains and losses, if we indulge in doctrinaire talk about 'rights' and 'remedies', instead of giving these concepts a content that carries meaning to the understanding of men. • • •"

The question at issue involves some of the fundamental rights which are commonly recognized by governments of free people, that is to say, the securing of justice for its people as being one of the first duties of government. It is not only the inherent power but the duty of every government, in the exercise of sovereignty over its citizens, to provide the means whereby the rights of such citizens may be vindicated in courts of justice established by the sovereign. In this case, we have the question as to whether such fundamental rights of citizens of the District of Columbia, who are citizens of the United States but who are not citizens of any particular state of the Union, are to be denied such fundamental rights and privileges, when Congress has sought to protect them, upon a limited or narrow definition of the word "State" in the constitutional provisions involved. If greater attention is given to the fundamental constitutional principles upon which our government is founded, one of them being the equality of citizens in

their rights, privileges and immunities before the law and in courts of justice, than to the technical matter of making a choice among the several recognized definitions of the word "state" we will conclude that we are on sounder ground of constitutional construction, if we apply such definition as will result in the recognition and in the protection of such fundamental rights. (*United States* v. *Classic,* 313 U. S. 299, 61 S. Ct. 1031, 85 L. Ed. 1368; *Dick* v. *United States,* 208 U. S. 340, 28 S. Ct. 399, 52 L. Ed. 520; *Billings* v. *United States,* 232 U. S. 261, 282, 34 S. Ct. 421, 58 L. Ed. 596; *Kansas* v. *Colorado,* 206 U. S. 46, 27 S. Ct. 655, 51 L. Ed. 956.) Where a choice among the accepted definitions of the word "state", that of a narrow and specific sense, will deny to large numbers of our citizens the protection of these fundamental rights, whereas a choice of another definition of the word "state", that of a broader sense, will result in the recognition and in the protection of such fundamental rights, is it not more consistent with the spirit and purpose of the Constitution to accept and apply the definition which assures to citizens the equal protection of the fundamental rights for which free governments are formed? Let us examine this question.

Where words in the Constitution have "• • • full operation without • • • giv(ing) them • • • an exclusive sense • • • •" and "where a negative construction" • • • would destroy some of the most important objects for which the power was created, • • • (they) ought not to be construed negatively." (*Cohens* v. *Virginia,* 19 U. S. (6 Wheat.) 264, 395, 5 L. Ed. 257.) If the end desired by Congress is legitimate and within the scope of the Constitution, all appropriate means which are not prohibited by that instrument are constitutional. (*McCulloch* v. *Maryland,* 17 U. S. (4 Wheat.) 316, 421, 4 L. Ed. 579.) Thus, since the end served by the 1940 Amend-

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ment is to provide for the welfare of the citizens of the District under U. S. Const. Art. I, Sec. 8, cl. 17 and the means is not *expressly* prohibited by Art. III (see 29 Geo. L. J. 193, 199; *Williams* v. *United States*, 289 U. S. 553, 566, 53 S. Ct. 751, 77 L. Ed. 1372; *Neild* v. *District of Columbia*, 110 F. 2d 246, 250) the constitutionality of the statute should be sustained.

The question whether or not the District of Columbia is to be treated as a "state" within the terms of the Constitution has not been uniformly decided. Commerce between a state and the District of Columbia has been held to come under the "commerce clause." (U. S. Const. Art. I, Sec. 8, cl. 3; *Hanley* v. *Kansas City Southern Ry.*, 187 U. S. 617, 23 S. Ct. 214, 47 L. Ed. 333; *Stoutenbaugh* v. *Hennick*, 129 U. S. 141, 9 S. Ct. 256, 32 L. Ed. 637; *Neild* v. *District of Columbia*, 110 F. 2d 246.) "Full faith and credit" (U. S. Const. Art. IV, Sec. 1) must be accorded to judgments of the courts of the District. (*Embry* v. *Palmer*, 107 U. S. 3, 2 S. Ct. 25, 27 L. Ed. 346.) Right of trial by jury is guaranteed to citizens of the District by U. S. Const. Art. III, Sec. 2, Cl. 3 and Amend. VI. (*Callan* v. *Wilson*, 127 U. S. 540, 8 S. Ct. 1301, 32 L. Ed. 223; *Geofroy* v. *Riggs*, 133 U. S. 258, 10 S. Ct. 295, 33 L. Ed. 642.) District of Columbia has been held to be a state within the meaning of a treaty granting certain rights to aliens within "States of the Union." Ill. Rev. Stat. (1947) Ch. 131, Sec. 1.14, provides that the word "state" may be construed to include the District of Columbia. But it has been held (*Metropolitan R. Co.* v. *District of Columbia*, 132 U. S. 1, 10 S. Ct. 19, 33 L. Ed. 231) that the District is a municipal corporation. And Amendment XIV to the Constitution has been held not to apply to the District (*Wight* v. *Davidson*, 181 U. S. 371, 384, 21 S. Ct. 616, 45 L. Ed.

900; *Neild* v. *District of Columbia*, 110 F. 2d 246, 256). Thus the right of suffrage is not guaranteed to its citizens under the Constitution Art. XIV, Sec. 2. (*Heald* v. *District of Columbia*, 259 U. S. 114, 124, 42 S. Ct. 434, 66 L. Ed. 852.) The cases are not consistent as to whether or not the term may include the District. But the weight of the cases, however, appears to treat the district as a "state".

In *Talbott* v. *Board of Silver Bow County*, 139 U. S. 438, 444, 11 S. Ct. 594, 35 L. Ed. 599, the court observed:

> "Still further, while the word State is often used in contradistinction to Territory, yet in its general public sense, and as sometimes used in the statutes and the proceedings of the government, it has the larger meaning of any separate political community, including therein the District of Columbia and the Territories, as well as those political communities known as States of the Union. • • • On the face of the language, the word 'State' would seem to refer, not to political communities in general, but to those particular communities which form the States of the Union; yet it was held to include the District of Columbia, this court, by Mr. Justice Field, observing: 'This article is not happily drawn. It leaves in doubt what is meant by "States of the Union." Ordinarily these terms would be held to apply to those political communities exercising various attributes of sovereignty which compose the United States, as distinguished from the organized municipalities known as Territories and the District of Columbia. And yet separate communities, with an independent local government, are often described as States, though the extent of their political sovereignty be limited by relations to a more general government or to other countries. Halleck on Int. Law, c. 3, Secs. 5, 6, 7. The term is used in general jurisprudence and by writers on public law as denoting organized political societies with an established government. Within this definition the District of Columbia, under the

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government of the United States, is as much a State as any of those political communities which compose the United States.'"

In *Busby* v. *Electric Utilities Employers Union*, 323 U. S. 72, 89 L. Ed. 78, 65 S. Ct. 142, the court said (p. 73):

> "By Rule 81 (3) the 'law of the state' in proceedings in the District Court of the United States for the District of Columbia is 'the law applied in the District of Columbia.' That law is derived from the common law and statutes of Maryland in force at the time of the cession of the District to the United States, as modified by statutes of Congress and as determined and developed by the courts of the District. Act of February 27, 1801, 2 Stat. 103; *Armstrong* v. *Lear*, 12 Wheat. 169, 176; *McKenna* v. *Fisk*, 1 How. 241, 249."

A strong inclination to consider the District of Columbia a state in the generic sense is contained in the opinion of *Metropolitan Rd.* v. *District of Columbia*, 132 U. S. 1, 9, 10 S. Ct. 19, 33 L. Ed. 231, wherein the court said:

> "One argument of the plaintiff's counsel in this connection is, that the District of Columbia is a separate State or sovereignty according to the definition of writers on public law, being a distinct political society. This position is assented to by Chief Justice Marshall, speaking for this court, in the case of *Hepburn* v. *Ellzey*, 2 Cranch, 445, 452, where the question as to whether a citizen of the District could sue in the circuit courts of the United States as a citizen of a state. The court did not deny that the District of Columbia is a State in the sense of being a distinct political community; but held that the word 'State' in the Constitution, where it extends the judicial power to cases between citizens of the several 'States,' refers to the States of the Union. It is undoubtedly true that the District of Columbia is a separate political community in a certain sense, and in that sense may be called a State; but the sov-

ereign power of this qualified State is not lodged in the corporation of the District of Columbia, but in the government of the United States. Its supreme legislative body is Congress. The subordinate legislative powers of a municipal character which have been or may be lodged in the city corporations, or in the District corporation, do not make those bodies sovereign. Crimes committed in the District are not crimes against the District, but against the United States. Therefore, whilst the District may, in a sense, be called a State, it is such in a very qualified sense. No more than this was meant by Chief Justice Taney, when in the *Bank of Alexandria* v. *Dyer*, 14 Pet. 141, 146, he spoke of the District of Columbia as being formed, by the acts of Congress, into one separate political community, and of the two counties composing it (Washington and Alexandria) as resembling different counties in the same State; by reason whereof it was held that parties residing in one county could not be said to be 'beyond the seas,' or in a different jurisdiction, in reference to the other county, though the two counties were subject to different laws."

It has been held that decisions interpreting statutory language should not be precedent for construction of similar language found in the Constitution. In connection with the Federal Interpleader Act, the Supreme Court has specifically reserved the question of whether the constitutional phrase 'between citizens of different states' has a broader meaning than has been applied to its statutory equivalent. (*Treinies* v. *Sunshine Mining Co.*, 308 U. S. 66, 71, 60 S. Ct. 44, 47, 84 L. Ed. 85 1939).) Traditionally, constitutional language is given a broader meaning. In discussing the effect of the interpretation of statutory language upon the same wording found in the Constitution, one writer said, "The best reply • • • is, that constitutional language may be properly given a

wider interpretation than statutory language. Since the Constitution has a broader purpose than a statute and is intended to last for a much longer time, its wording should possess a flexibility which is not needed in a statute." (Chafee, Federal Interpleader Since the Act of 1936, 49 Yale L. Jour. 377, 395 (1940).) See *Lamar* v. *United States*, 240 U. S. 60, 65, 36 S. Ct. 255, 257, 60 L. Ed. 526 (1916).)

There has been little dissent from the proposition that political subdivisions as well as "natural" persons are "citizens" of the state within which they are situate or domiciled as the case may be within the meaning of that section of the Judicial Code and the related constitutional provision which extend federal jurisdiction to cases involving citizens of different states. (*Cowles* v. *Mercer County*, 74 U. S. (7 Wall.) 118, 19 L. Ed. 86 (1869); *Lincoln County* v. *Luning*, 113 U. S. 529, 10 S. Ct. 363, 33 L. Ed. 766 (1890); *Port of Seattle* v. *Oregon & W. R. Co.*, 255 U. S. 56, 41 S. Ct. 237, 65 L. Ed. 500 (1921).)

In 11 George Washington Law Review, 258, 259, referring to *McGarry* v. *City of Bethlehem*, 45 F. Supp. 385 (E. D. Pa. 1942), the author says:

> "• • • The incongruity of resorting to the fiction of holding the City of Bethlehem to be a 'citizen' of the Commonwealth of Pennsylvania for the purpose of satisfying a jurisdictional requirement of diverse citizenship and refusing, at the same time, to apply the fiction to the District of Columbia as a 'state' for the same purpose is quite evident, and a careful analysis of the cases supporting these opposite propositions fails to dispel the aura of arbitrariness which pervades them. • • •"

A county in Missouri was classified as a citizen of that state for the purpose of subjecting it to a suit in the federal court (*McPike* v. *Lincoln County*, 7 Cent. L. J. 264

(quoted in *Cunningham* v. *Ralls County*, 1 Fed. 453 (C.C. E.D. Mo. 1880)), where the court said:

> "We cannot assent to the conclusion that it is within the power of a state to create political bodies capable of contracting debts with citizens of other states, and yet privileged against being compelled to pay those obligations by suit in the National Courts."

In another case the court employed similar terms in treating a county as a "citizen" for jurisdictional purposes, saying: "This right to contract implies liability to suit by a citizen of another state, and this gives jurisdiction to the federal courts." (*Hoover* v. *Crawford County*, 39 Fed. 7 (C.C. Ark. 1889), citing *Cowles* v. *Mercer County*, 74 U. S. (7 Wall.) 118, 19 L. Ed. 86.) If the argument is tenable in these cases, it applies with equal or greater force to citizens of the District of Columbia and the territories of Hawaii and Alaska, who enjoy equal rights to contract and are subject to parallel duties. Neither the term "citizen" nor the word "state" connotes a single and restricted meaning in all of the various places in which it is employed in the Constitution. Thus, a corporation, though a "citizen" for the purpose of jurisdiction is not a "citizen" within the contemplation of the privileges and immunities clause. (*Paul* v. *Virginia*, 75 U. S. (8 Wall.) 168, 19 L. Ed. 357 (1869); *Pembina Consol. Min. Co.* v. *Pennsylvania*, 125 U. S. 181, 8 S. Ct. 737, 31 L. Ed. 650 (1888).) "The word 'state' is used in the Constitution more than forty times. Uniformity is lacking in the various cases determining whether or not the District of Columbia and the territories are, or are not, 'states' within the meaning of the different sections. All that can be said is that for some purposes they are, for others they are not." (29 Geo. L. J. 193 at 195) Citizens of the District of Colum-

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bia do not possess the privilege accorded citizens of the "states" of voting in national elections, but the District may be taxed directly in proportion to the census in the same manner as the states. (*Heald* v. *District of Columbia,* 259 U. S. 114, 42 S. Ct. 434, 66 L. Ed. 852; *Loughborough* v. *Blake,* 18 U. S. (5 Wheat.) 317, 5 L. Ed. 98.)

The manifest purpose of the constitutional provision conferring jurisdiction on the federal courts in cases involving citizens of different states was to secure the citizens against local prejudice which might injure him if he were compelled to litigate controversies in the tribunals of his adversary's state. (*Polk's Lessee* v. *Wendell,* 18 U. S. (5 Wheat.) 293, 5 L. Ed. 92; *Whelan* v. *N. Y. R. Co.,* 35 Fed. 849), or, as Hamilton put it, "• • • it is essential to the peace of the Union," and "• • • whatever practices may have a tendency to disturb the harmony between the states are proper objects of Federal superintendence and control." (The Federalist (Hamilton), Lodge Edition, Ch. LXXX, pp. 496-7.)

It is evident that a more realistic approach to the question of the rights of citizens of the District of Columbia and the territories of Alaska and Hawaii to visit the fountains of federal justice by the same route which is open to citizens of the several states is requisite to give life and vigor to the principles of equality of privilege and freedom from discrimination which is the inalienable right of all citizens of the United States.

In an interesting article in the Nebraska Law Review, March, 1948, a thorough study was made of the constitutionality of the amendment of 1940 to the Judicial Code, from which we would like to quote:

> "Only the Hepburn case undertook to construe the word 'state' as used in Article 3. All subsequent decisions were based on the *Hepburn* ruling,

and in no other case was the question re-examined by the Supreme Court. Some lower courts expressed difficulty in understanding the validity of the interpretation in the *Hepburn* case. See, *U. S. ex rel. Champion* v. *Ames*, 95 Fed. 453 (C.C. N.D. Ill. 1899); *Watson* v. *Brooks*, 13 Fed. 540 at 543 (C.C. Ore. 1882), cited *supra* note 16. It is therefore important to examine the reasoning employed in the *Hepburn* case. In that case Marshall cited passages from Articles 1 and 2 and concluded the word 'state' was used to mean a member of the American Confederacy only. He stated,

> 'When the same term which has been used plainly in this limited sense in the articles respecting the legislative and executive departments, is also employed in that which respects the judicial department, it must be understood as retaining the sense originally given to it.
>
> 'Other passages from the Constitution have been cited by the Plaintiff to show that the term state is sometimes used in its more enlarged sense. But on examining the passages quoted, they do not prove what was to be shown by them.' (*Hepburn* v. *Ellzey*, 2 Cranch 445, 453.)

Thus, Marshall expressed his belief the word 'state' was used in the Constitution only to mean a member of the Union. His conclusion was not founded on any interpretation of Article 3 but on the conviction that the word 'state' was used in its narrower meaning throughout the Constitution, and, *a fortiori*, was employed in that sense in Article 3, Section 2. It would therefore follow that any later case which interprets 'state', as used in the Constitution, more broadly, has overruled the premises upon which the Chief Justice's conclusion was based, nullified the long line of cases which mechanically accepted his conclusion, and reopened the problem for judicial interpretation. * * *

"But perhaps the clearest example of the impossibility of imputing a single, simple meaning to the word 'state' is found in the case of *Downes* v. *Bidwell*,

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182 U. S. 244 (1901). There the court was called upon to determine whether the territory of Puerto Rico was embraced within the word 'state' as used in two constitutional provisions: Art. 1, Sec. 8, Cl. 1, which declares, '• • • but all Duties, Imposts and Excises shall be uniform throughout the United States,' and Art. 1, Sec. 9, Para. 6, which reads, '• • • nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay duties in another.' The Foraker Act, which imposed the duties in question, was held constitutional by a divided court, which stated that Puerto Rico was not within the protection of those sections since it was an 'unincorporated territory.' It was clear that had Puerto Rico been an incorporated territory a contrary result would have been reached. The four dissenting justices felt the Act was unconstitutional and that the distinction between incorporated and unincorporated territories was without merit.

"Significant, too, is the fact that despite the early precedent set by Marshall's definition of 'state', the courts have liberally construed the word as used in treaties (*Geofroy* v. *Riggs*, 133 U. S. 258 (1889); *cf. Ex parte Heikich Terui*, 187 Cal. 24, 200 Pac. 955 1921) where 'territories of the United States' was held to include states) and congressional enactments. *Laughlin* v. *Poucher*, 127 Conn. 447, 17 A. (2d) 767 (1941); *The Ullock*, 19 Fed. 207 (D.C. Ore. 1884); *Trery* v. *Olcott*, 4 Conn. 442 (1823); 36 O.A.G. 59 (1912); *Alesna* v. *Rice*, 74 F. Supp. 865 (D.C. Hawaii 1947). *Contra: Smith* v. *U. S.*, 1 Wash. Terr. Rep. 262 (1869); *Houston East & West Tex. Ry. Co.* v. *Inman, Akers & Inman*, 63 Tex. Civ. App. 556, 134 S. W. 275 (1911). Another interesting comparison lies in the status of the southern states immediately following the Civil War. See: *Texas* v. *White*, 74 U. S. 727 (1869) where it was held Texas was a state within the meaning of Art. 3, Sec. 2 ('in which a state shall be a party') despite the fact Texas had seceded and was, at the time of the suit, gov-

erned as a conquered province, and, of course, has no representatives in Congress (a criterion on which much stress was placed in the *Hepburn* case)."

The several law review articles which have been helpful in dealing with this Point 5 are listed as follows:

The Constitutionality of the 1940 Extension of Diversity Jurisdiction, 55 Yale Law Journal 600;

Federal Procedure—Diversity of Citizenship as Applied to Citizens of the District of Columbia and Territories, 5 Louisiana Law Review 478;

Diversity of Citizenship Clause Extended, 29 Georgia Law Review 193;

Federal Jurisdiction—Constitutional Law, 11 George Washington Law Review 258;

Federal Procedure — Diversity Jurisdiction — 1940 Amendment, 21 Texas Law Review 83;

The 1940 Amendment to the Diversity of Citizenship Clause, 21 Tulane Law Review 171;

Federal Jurisdiction—Constitutional Law—District of Columbia, XLVI Columbia Law Review 125;

Diversity of Citizenship Clause Extended, 29 Georgetown Law Journal 193;

Washingtonians and Rumanians, Nebraska Law Review, March, 1948.

WHEREFORE, the plaintiff and petitioner respectfully suggests to the court that the Circuit Court of Appeals for the Seventh Circuit was in error in holding unconstitutional that portion of Sec. 24(1) of the Judicial Code as amended by Congress in 1940, 54 Stat. 143, 28 U.S.C.A. Sec. 41(1), extending the jurisdiction of United States

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District Courts to cases "between citizens of different states or citizens of the District of Columbia, the territory of Hawaii or Alaska and any state or territory"; and that the judgment of the Circuit Court of Appeals for the Seventh Circuit in the case at bar ought to be reviewed by the Supreme Court of the United States on certiorari.

Conclusion.

It is therefore respectfully submitted that, by reason of the foregoing, a Writ of Certiorari should be granted herein and that this Court should review the decision of the United States Circuit Court of Appeals for the Seventh Circuit and reverse the same and remand the cause for further proceedings as to this Court shall seem proper.

Respectfully submitted,

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